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Supreme Court of the United States

OCTOBER TERM, 1959

No. 167

TEXAS GAS TRANSMISSION CORPORATION, ET AL., PETITIONERS,

vs.

SHELL OIL COMPANY.

No. 170

FEDERAL POWER COMMISSION, PETITIONER,

vs.

SHELL OIL COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED JULY 1, 1959
CERTIORARI GRANTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Proceedings in the U.S.C.A. for the Third Circuit		
Petition to review and set aside order of the Federal Power Commission	A	1
Joint appendix consisting of proceedings before the Federal Power Commission	M	11
Excerpts from transcript of testimony	2	11
Testimony of E. S. Quinn—		
direct	2	12
cross	9	18

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 14, 1960

	Original	Print
Joint appendix consisting of proceedings before the Federal Power Commission—Continued		
Excerpts from transcript of testimony—Continued		
Testimony of W. L. Bowser—		
direct	11	19
E. S. Quinn—		
(recalled)—		
cross	19	27
Exhibit No. 2—Letter dated October 11, 1954, from Shell Oil Company to Louisiana Natural Gas Corporation	29	35
Exhibit No. 4—Letter dated August 27, 1953 from Louisiana Natural Gas Corporation to The Atlantic Refining Company	30	36
Exhibit No. 5—Letter dated February 2, 1954 from B. F. Carr, Natural Gas Section to Louisiana Natural Gas Corporation with two pages of attachments	32	38
Exhibit No. 6—Averages of major pipe company prices in South Louisiana showing highest prices escalated over five years with escalation based on September 1 contract date	34	41
Exhibit No. 7—Prices of gas being sold in southwest Louisiana in similar quantities to those under Louisiana Natural Gas Corporation contract covering Atlantic Refining Company's properties in North Tepetate Field	35	43
Exhibit No. 9—Letter dated February 17, 1954 from The Atlantic Refining Company to Louisiana Natural Gas Corporation	37	46
Exhibit No. 10—Letter dated February 22, 1954 from Louisiana Natural Gas Corporation to The Atlantic Refining Company	38	47
Exhibit No. 11—Excerpts from letter dated March 31, 1954 from Louisiana Natural Gas Corporation to Shell Oil Company	39	48
Exhibit No. 12—Auditors' Confirmation letters received by and returned by Shell Oil Company	43	50

	Original	Print
Joint appendix consisting of proceedings before the Federal Power Commission—Continued		
Excerpts from transcript of testimony—Continued		
Item No. A—Shell Oil Company F.P.C. Gas Rate Schedule No. 153, for the sale of gas from Shell Oil Company to Louisiana Natural Gas Corporation, dated May 1, 1951	52	57
Item No. B—Supplement No. 1 to F.P.C. Gas Rate Schedule No. 153	70	72
Item No. C—Sample billing from Shell Oil Company to Louisiana Natural Gas Corporation, for gas sold and delivered during May, 1954	80	80
Item No. D—Billing from Louisiana Natural Gas Corporation to Shell Oil Company for the month of May, 1954	81	81
Item No. E—The Atlantic Refining Company F.P.C. Gas Rate Schedule No. 55, being the gas purchase agreement between Atlantic Refining Company and the Defense Plant Corporation, dated September 1, 1943, covering the sale of gas produced by Atlantic in the North Tepetate Field	81	81
Item No. F—Supplement No. 1 to Atlantic Refining Company Rate Schedule No. 55	99	96
Item No. G—Supplement No. 2 to Atlantic Refining Company Rate Schedule No. 55	102	99
Item No. H—Supplement No. 3 to Atlantic Refining Company Rate Schedule No. 55	109	105
Excerpts from Item No. J—Excerpts from contracts filed by Shell Oil Company with F.P.C. as Gas Rate Schedule which contain "Price" type Most Favored Nation provisions	110	106
Order accepting rate schedule for filing and providing for hearing	116	110
Decision, Presiding Examiner, Woodall, Docket No. G-12191, issued August 9, 1957	118	112
Order determining rate, Docket No. G-12191, issued November 12, 1957	133	126
Application for rehearing by Shell Oil Company	146	138
Order denying rehearing	153	143

	Original	Print
Joint appendix consisting of proceedings before the Federal Power Commission—Continued		
Letter dated January 6, 1955 from Leon M. Fuquay, Secretary, to Shell Oil Company	161	150
Exhibit "B"—Attached to contract dated as of May 1, 1951 between Louisiana Natural Gas Corporation and Shell Oil Company	163	152
Opinion, McLaughlin, J.	174	160
Judgment	180	165
Order denying petitions for rehearing	181	166
Clerk's certificate (omitted in printing)	182	166
Orders extending time to file petitions for writs of certiorari	183	167
Orders granting certiorari	187	168

[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 12568

SHELL OIL COMPANY, Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

PETITION TO REVIEW AND SET ASIDE ORDER OF THE FEDERAL POWER COMMISSION—Filed March 7, 1958

To the Honorable the United States Court of Appeals for the Third Circuit:

Shell Oil Company, herein called "Shell", petitions this Honorable Court to review and set aside a final order of the Federal Power Commission, herein called "the commission", issued November 12, 1957 (rehearing denied January 8, 1958) in a proceeding entitled *In the Matter of Shell Oil Company*, Docket No. G-12191.

1.

Nature of the Proceeding.

(a) Proceedings before the Commission.

This proceeding was instituted by the Commission for the purpose of determining Shell's legally effective price [fol. B] as of June 7, 1954[1] for natural gas produced in the Chalkley Field, Cameron Parish, Louisiana and sold by Shell to Louisiana Natural Gas Corporation, herein called

[1] The date as of which the Commission asserted jurisdiction over the rates of independent producers of natural gas following *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672.

"Louisiana Natural", under a gas sale contract dated May 1, 1951.[2] This contract is on file with the Commission as Shell's F. P. C. Gas Rate Schedule No. 153, and will be referred to herein sometimes as "the Shell contract".

Pursuant to the requirements of the Commission's Order 174-A as modified by order issued September 24, 1954 (19 Fed. Reg. 5081, 6301) requiring independent producers of natural gas to file with the Commission on or before December 1, 1954 their rates in effect on June 7, 1954, Shell filed with the Commission on November 18, 1954 the May 1, 1951 gas sales contract as its rate schedule.

As a part of its said rate schedule filing, and in addition to the contract itself, Shell filed two documents. One is a copy of credit statement from Louisiana Natural to Shell covering sales of gas for the month of May, 1954.[3] This statement reflects that payments as of that time were actually being made on the basis of the 8.9970 cent price. Shell concedes that that price was actually being paid on June 7, 1954. The other document which Shell filed was a form of sample billing prepared by Shell to evidence its position that the effective June 7, 1954 price was 12.5 cents per Mcf instead of 8.9970 cents per Mcf. Accordingly, this sample billing shows the price for the month of May, 1954 to be [fol. C] 12.5 cents per Mcf, plus gathering tax reimbursement, or a total of 13.5 cents per Mcf, for gas sold under the Shell contract. This billing statement contains the following notation:

> "We (Shell) claim the contract price is 12.5¢ per Mcf. (effective from September 1, 1953), but we have

---

[2] The contract was between Shell, as Seller, and Louisiana Natural, as Buyer. By merger in June, 1955, Texas Gas Transmission Corporation succeeded to all the rights and obligations of Louisiana Natural under the contract. The purchaser under this contract will sometimes be referred to as Louisiana Natural and sometimes as Texas Gas, depending upon which was the purchaser at the time of the event being discussed.

[3] The contract did not provide for Shell to bill the purchaser for gas sold. Instead the contract required, and the practice was, that the purchaser furnish Shell with monthly statements showing how much gas was delivered under the contract and the amount owing therefor to Shell.

received only 8.997¢ per Mcf. This matter is now under negotiation with purchaser."

On February 11, 1957 Shell filed, as Supplemental No. 1 to said rate schedule, an application for a rate increase from 12.5 cents per Mcf to 16.75 cents per Mcf, plus tax reimbursement.[4] In this filing, and pursuant to a previous request from the Commission, Shell explained the basis for its position that the legally effective rate on June 7, 1954 under its Rate Schedule No. 153 was 12.5 cents per Mcf, the basis being that the contract price had automatically increased to that figure prior to June 7, 1954, and Shell was legally entitled to the higher price notwithstanding that the purchaser was contending for and hence only paying the lower price.

By order issued on March 13, 1957 the Commission accepted the foregoing rate schedule for filing. In its said order, the Commission, recognizing that a dispute existed between Shell and Texas Gas as to the legally effective rate, fixed this matter for hearing for the purpose "of determining and fixing the rate properly effective on June 7, 1954 for the sale of gas by Shell Oil Company under its F. P. C. Gas Rate Schedule No. 153 to Texas Gas Transmission Company, and any other matters incident to such issue."

Texas Gas, present purchaser under the Shell contract, and Louisville Gas & Electric Company, a customer of Texas Gas, were permitted to intervene. A hearing was held on April 29, 1957, and these two intervenors, together with counsel representing the staff of the Commission, participated in that hearing.

[fol. D] On August 9, 1957 the Presiding Examiner, after having received briefs from all parties, issued a decision in favor of Shell finding that Shell's rate under its Rate Schedule No. 153, effective June 7, 1954, was 12.2 cents per Mcf at a pressure base of 15.025 pounds per square inch absolute, exclusive of severance and gathering taxes. When the Louisiana severance and gathering taxes are added to

[4] This price increase is not at issue here. It has been suspended and is pending before the Commission in another proceeding.

this amount it is 13.5 cents per Mcf.

Exceptions to the decision of the Presiding Examiner were filed with the Commission by staff counsel and by the intervenors, Texas Gas and Louisville Gas.

Shell filed with the Commission a motion for oral argument and for leave to file brief in support of the Presiding Examiner's decision.

On November 12, 1957 the Commission issued an order denying Shell's motion, reversing its Presiding Examiner, and finding:

> "The charge for natural gas by Shell under its F. P. C. Gas Rate Schedule No. 153 to Texas Gas, effective June 7, 1954, is 8.997 cents per Mcf at 15.025 psia excluding the one-cent gathering tax."

Shell timely filed an application for rehearing of the Commission's order. On January 8, 1958 the Commission denied rehearing.

The sole question involved is, what was the legally effective price on June 7, 1954 under the Shell contract?

(b) The Evidence.

The Shell contract of May 1, 1951 (Rate Schedule No. 153) contains the following favored-nation clause, around the meaning of which this proceeding centers:

> "If at any time after December 31, 1951, Buyer shall enter into a contract providing for the purchase by it of gas produced from a field or fields located, and delivered to Buyer, within a radius of fifty (50) miles of any point of delivery provided hereunder, Buyer shall forthwith notify Seller of such fact, and if the price per one thousand (1000) cubic feet at any time [fol. E] payable under such other contract is higher than the price payable hereunder, each price payable hereunder which is less than the price payable at the same time under such other contract shall be immediately increased so that it will equal the price payable under such other contract. In determining whether the price payable under such other contract is 'higher'

than the price payable for gas under this contract, due consideration shall be given to the provisions of this contract as compared with such other contract as to quality of gas, delivery pressures, gathering and compressing arrangements, quantity, provisions regarding measurement of gas, including deviation from Boyle's Law, taxes payable on or in respect of gas delivered and all other pertinent factors."

On September 1, 1943, Atlantic Refining Company, herein called "Atlantic", had entered into a contract for the sale of gas in the North Tepetate Field, Acadia Parish, Louisiana, to Defense Plant Corporation. The North Tepetate Field is located within a radius of 50 miles of the Chalkley Field. Louisiana Natural Gas Corporation (who was also the buyer under the Shell contract) succeeded to all the rights and obligations of the buyer under this Atlantic contract. This contract (referred to herein as "Atlantic contract") provided for a price for the first five years of 2.2¢ net per Mcf, and contains the following provisions (Art. III):

"(b) At the end of the first five-year period, Buyer and Seller are to reach an agreement as to the price for gas sold and delivered under this contract during the second five-year period. The price to be paid during such second five-year period is to be agreed upon at the beginning of such period after a survey of prevailing prices for gas being sold in similar quantities in the southwestern part of Louisiana.

"(c) During succeeding five-year periods, price to be paid will be determined at the beginning of each period in the same manner as provided for in paragraph (b) above.

[fol. F] "(d) In the event that the parties are unable to agree upon the price to be paid for gas after the first five-year period, in accordance with the arrangements set forth in paragraphs (b) and (c) above, such determination shall be submitted to arbitration in accordance with Condition XII."

ruary 17, 1954, Atlantic and Louisiana Natural, onged negotiations, entered into the following ntract:

ıder date of September 1, 1943, Defense Plant ›ration, as Buyer, entered into a gas purchase ıct with The Atlantic Refining Company, as , for the purchase of gas produced from Seller's in the North Tepetate pool of Acadia Parish, iana, which contract was subsequently amended ıary 16, 1949. Louisiana Natural Gas Corporation ased the pipe line operated by Defense Plant ›ration and the aforesaid contract with The At- Refining Company was assigned to Louisiana ral Gas Corporation.

accordance with Paragraph III of said contract, ıereby agreed that the price to be paid by Louisi- Natural Gas Corporation to The Atlantic Refining ›any for gas sold and delivered under such con- between September 1, 1953, and August 31, 1958, inclusive, shall be 12.2 cents net for each 1,000 feet at a pressure base of 15.025 p. s. i. a. of gas red at the central point or points set forth in the ıal contract, regardless of whether such gas is ered to a government plant or not; and, in addi- Buyer shall reimburse Seller for all state sever- taxes, or similar taxes, which Seller is obligated y and has paid to the State of Louisiana on such

hell's position that this contract of February 17, een Atlantic and Louisiana Natural activated the ation clause in the Shell contract and caused the he Shell contract to increase to 12.5¢, plus gather- ffective September 1, 1953.

2.

Jurisdiction of This Court.

›urt has jurisdiction of the subject-matter of this y virtue of Section 19(b) of the Natural Gas Act 831; 15 U. S. C. 717r(b)).

Shell was a party to the proceeding in which the Commission's Order of November 12, 1957 was issued. Shell has applied for a rehearing thereon which was denied on January 8, 1958. Said order, with the denial of rehearing, is a final order and Shell is aggrieved thereby. Each of the points hereinafter set forth upon which Shell relies was urged in its application for rehearing.

3.

Facts Upon Which Venue is Based.

Shell is a corporation organized and incorporated under the laws of the State of Delaware. Shell is, therefore, located within this circuit, and venue of this petition properly rests in this Court under the provisions of Section 19(b) of the Natural Gas Act (52 Stat. 831; 15 U. S. C. 717r(b)).

4.

Grounds on Which Relief is Sought.

The Commission reversed its Presiding Examiner and concluded that Shell's effective June 7, 1954 rate was 8.9970¢ rather than 12.5¢ per Mcf, thus finding that the Shell favored-nation clause had not been activated as a result of the February 17, 1954 contract between Louisiana Natural and Atlantic. The Commission's order is based upon two propositions. The first is that 8.9970¢ was the [fol. H] amount *actually being paid* on June 7, 1954, hence that is the legally effective rate no matter what the contract means nor what Shell was legally entitled to be paid thereunder. The second is that the contract which Louisiana Natural made with Atlantic on February 17, 1954, effective as of September 1, 1953, although entered into after the Shell contract and covering gas within the required 50-mile radius, was not a new contract for the purchase of gas but was merely action taken pursuant to a pre-existing contract, hence it did not meet the requirements of the Shell favored-nation clause.

Shell urges that the Commission was in error as to both propositions, and relies herein for relief upon the following grounds, each of which was urged in its application for rehearing filed with the Commission:

a. The Commission erred as a matter of law in concluding that the legally effective June 7, 1954 rate is to be determined solely by the amount of money actually being paid, rather than by the amount legally due under the contract. Thus the Commission erred in finding that the "effective rate on June 7, 1954 was 8.997 cents per Mcf at 15.025 psia excluding taxes, for that was the charge actually being collected from Texas Gas",[5] and erred in concluding "It clearly appears, therefore, that the price actually collected on June 7, 1954 is 8.997 cents, and this under our previous decisions is the effective rate as of that date and continues on from that date until changed in accordance with Section 4 of the Natural Gas Act and our Regulations."

b. The Commission's conclusion in disregarding contract rights, and in adopting "amount paid", rather than the amount legally due under the contract, as the sole criterion for determining the legally effective rate, is insupportable in reason, contrary to law and the Natural Gas Act, and is violative of the Fifth Amendment to the Constitution of [fol. 1] the United States in that it deprives Shell of its property without due process of law by impairing its contract right to receive for its property the price agreed to be paid therefor by the buyer, and arbitrarily substitutes the amount which the buyer saw fit to pay for the amount which the contract obligated the buyer to pay.

c. The Commission erred in determining "that the escalation clause in Shell's contract was not 'triggered' by Texas Gas' agreement with Atlantic for increased rates dated February 17, 1954", and in concluding that the 8.9970¢ rate was not escalated because "The agreement with Atlantic does not constitute a new contract as required by Shell's escalation clause, but merely represents action taken under a pre-existing contract between Texas Gas and Atlantic." These conclusions are contrary to law, not supported by any evidence, and conflict with uncontradicted evidence.

---

[5] The Commission, throughout its order, refers to the buyer under the Shell contract as Texas Gas rather than Louisiana Natural.

d. The Commission erred as a matter of law in concluding that Condition XII of the Atlantic contract (the arbitration provision) makes it clear that where the parties are unable to agree, arbitration of the price dispute is assured. The Commission also erred, as a matter of law and fact, in assuming that arbitration would assure a fixing of the price by the arbitrators.

e. The Commission erred in concluding that "paragraph (d) of the Atlantic contract provides for a definite method by which a price will be fixed in case the parties fail to agree". This conclusion is contrary to law.

f. The Commission erred as a matter of law in not holding this case to be governed solely by the law of Louisiana, the State in which the gas is produced, delivered and title passes. To the extent the Commission did look to the law of Louisiana, it committed legal error in not following and applying the clear provisions of that law as set forth in the Louisiana Civil Code, especially LSA-CC Article 2465.

g. The Commission erred legally in failing to consider Shell's alternative position that the favored-nation clause [fol. J] in the Shell contract is ambiguous and should be construed against the buyer who prepared it. In this regard the Commission failed to consider uncontradicted evidence showing the intended purpose of the clause.

h. In its order denying rehearing the Commission erred, in law and in fact, in concluding "In our opinion, Shell's rate being charged on June 7, 1954, by its own action was 8.997 cents, and was the effective rate."

i. The Commission erred in its denial of rehearing in construing the Atlantic price clause as one under which either party could have *forced* the price question to arbitration even in the absence of a disagreement between the parties prior to September 1, 1953. This conclusion is contrary to law and the plain wording of the contract.

j. In its denial of rehearing the Commission erred in concluding, apparently by assumption, that the existence of a contract right to submit the price question to arbitration, is sufficient unto itself to constitute a valid sale. In concluding that a "contract to determine the price by arbi-

tration" necessarily fixes a definite and certain price and thus meets the requirements of Louisiana law, the Commission disregards the clear meaning of the law of Louisiana, especially LSA-CC Article 2465.

k. In its denial of rehearing the Commission erred in giving weight to price provisions in other contracts not in issue here, and in disregarding positive evidence as to the meaning of the contract in issue.

l. The Commission erred in not affirming the decision of its Presiding Examiner and in not concluding that Shell's legally effective June 7, 1954 rate was 12.5 cents per Mcf, plus gathering tax. The conclusions so reached by the Commission are contrary to law and to the evidence.

[fol. K] 5.

Relief Prayed.

Shell prays that copies of this petition be served upon Respondent as required by law and the rules of this Court; that this Court review and set aside in its entirety the Order Determining Rate issued by the Commission in its Docket No. G-12191 on November 12, 1957. Shell further prays that this Court determine and enter judgment that Shell's legally effective June 7, 1954 rate under its F. P. C. Gas Rate Schedule No. 153 is 12.5 cents per Mcf, plus gathering tax, or, in the alternative, enter judgment setting aside said order of the Commission and remanding this proceeding with directions to the Commission that it enter an order finding that Shell's legally effective June 7, 1954 rate under its F. P. C. Gas Rate Schedule No. 153 is 12.5 cents per Mcf, plus gathering tax.

Respectfully submitted,

Oliver L. Stone, 50 West 50th Street, New York 20, N. Y., George C. Schoenberger, Jr., William W. Westerfield, Jr., Shell Building, New Orleans, La., By Oliver L. Stone.

Dated, New York, N. Y., March 4, 1958.

[fol. L] *Duly sworn to by Oliver L. Stone, jurat omitted in printing.*

[File endorsement omitted]

[fol. M]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,568

SHELL OIL COMPANY, Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent,
TEXAS GAS TRANSMISSION CORPORATION, Intervenor,

and

LOUISVILLE GAS AND ELECTRIC COMPANY, Intervenor.

PETITION TO REVIEW AND SET ASIDE ORDER OF THE
FEDERAL POWER COMMISSION

Joint Appendix—Filed September 26, 1958

[fol. 2]

PROCEEDINGS BEFORE FEDERAL POWER COMMISSION

Excerpts From Transcript of Testimony

Mr. Stone: I now ask there be identified as Item "C" by reference a sample billing from Shell Oil Company to Louisiana Natural Gas Corporation, for gas sold and delivered during May, 1954.

Mr. Becker: Mr. ——— excuse me.

Mr. Stone: This item was also—strike "also"—was filed with and made a part of the Shell F.P.C. rate schedule filed with the Commission in November, 1954.

Mr. Becker: Mr. Examiner, I believe there is a rather confused situation about this so-called sample billing. But in the first place, I would like to ask Mr. Stone if he is prepared to state whether this so-called sample billing was

at any time mailed to either Louisiana Natural Gas Company or Texas Gas Transmission Company, other than a possible mailing of that filing to which it was attached.

Mr. Stone: I am prepared to answer that question. Other than having furnished the purchaser with a copy of our rate schedule filing in November, 1954, that billing was not separately sent to the purchasers. That billing, in effect, represents a statement of the position of Shell Oil Company.

• • • • • • •

E. S. Quinn was called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stone:

Q. By whom are you employed?

A. Shell Oil Company.

Q. In what capacity?

A. Gas Contract Representative.

[fol. 3] Q. How long have you been in Shell's Gas Department?

A. 32 years.

Q. Are you familiar with the contract dated May 1, 1951, between Shell and Louisiana Natural Gas Corporation, covering the sale of gas in the Chalkley Field, Louisiana?

A. I am.

Q. Is that the same contract Shell filed as F.P.C. Gas Rate Schedule 153?

A. It is.

Q. Are you familiar with the terms of that contract?

A. Yes.

Q. Who negotiated that contract in behalf of Shell?

A. You might say 90 per cent of it was done by me. We had some other help, but very little. I was in on all of the discussions.

Q. Where were you located at that time?

A. Houston, Texas office.

Q. Did Shell then have an office in New Orleans, Louisiana?

A. Yes.

Q. Where was the office of Louisiana Natural Gas Company at that time; that is, from which they sent out negotiators?

A. Shreveport, Louisiana.

Q. Where did most of the negotiations on that contract take place?

A. In my office in Houston.

Q. By whom was the contract prepared?

A. It was prepared by the purchaser.

Q. That is, Louisiana Natural Gas?

A. Yes.

Q. And they presented it to you for acceptance?

A. Right.

Q. Where was that contract executed by Shell?

A. In Houston.

* * * * * * *

Q. Where is the gas located that is covered by this contract?

A. Chalkley Field, Cameron Parish, Louisiana.

[fol. 4] Q. Where is the delivery point under contract?

A. Central point in the field.

Q. It is in the field?

A. Yes. By that I mean a mutually agreed-upon central point.

Q. At any rate, the delivery point is in the Chalkley Field?

A. Yes.

* * * * * * *

By Mr. Stone:

Q. In the negotiations leading to the execution of this Shell-Louisiana Natural contract, what transpired relative to the price and particularly relative to the favored nations clause you have just identified?

A. Well, of course, I might say that the two foremost considerations in this thing were term—we were asked for a 20-year term, which we hadn't done before. And there came along with that, then, the price which would justify us in accepting a 20-year term at that time. At that time

it was quite impossible to predict what gas prices would be down the line. We were presented with this favored nation clause which we felt would protect us, at least would give to us the going price, the market price, as in years past in this operation.

We had no other way, actually, to justify a 20-year contract.

• • • • • • •

By Mr. Stone:

Q. What did you intend and understand that Shell Oil would accomplish by virtue of the favored nations clause in this contract?

Mr. Becker: I must renew objection to that question, Your Honor. That is completely incompetent under any rule of law.

[fol. 5] Mr. Weston: Staff Counsel agrees.

Mr. Stone: Again, we contend that the contract is unambiguous, also, the way we read it. We think we are entitled to the same price purchaser contracted to pay to the Atlantic Refining Company. This matter has been in dispute several years now between the parties. I submit there is uncertainty or ambiguity in this contract brought about by the position taken by the purchaser.

Presiding Examiner: Don't be too surprised, but for my understanding of it he has already answered the question. He hoped to keep up with the market price as it went along.

Mr. Stone: That is good enough for me, Mr. Examiner.

Presiding Examiner: That is what he said.

• • • • • • •

Presiding Examiner: I think you have said already—the key words here, "have the benefit of any higher price," you have already stated it. That is the very thing the man said, it was the purpose of this clause. And anybody that knows anything about the favored nations clause, that is what it had to mean.

• • • • • • •

Presiding Examiner: Who proposed this clause?

The Witness: Well, I might say—

Presiding Examiner: I am not sure the record is clear. He said something about it.

The Witness: It came about this way: We said if we could see the proper prices down the road, we were in position to make a trade. This was brought along as the [fol. 6] answer to that particular quandary we were in. So it was a part of the contract that was submitted to us.

Mr. Weston: There is a point unclear to me. Was it Texas Gas, or rather their predecessor, Louisiana Natural, who wanted the 20-year term, the extended term?

The Witness: Right.

Mr. Weston: And you believe this clause was exacted in consideration thereof?

The Witness: Yes, I believe so.

* * * * * * *

Mr. Stone: I was just getting to the point of establishing through this witness that the North Tepetate Field and the delivery point in that field from the Atlantic Refining Company to the Louisiana Natural Gas Company was within a 50-mile radius of the delivery point in the Chalkley Field under the Shell-Louisiana Natural contract.

Do I understand that counsel for Texas Gas will stipulate that that is a fact?

Mr. Becker: You are correct, sir. We shall so stipulate.

Mr. Stone: I ask that the record show the parties have stipulated that the delivery point under the Atlantic contract is within the 50-mile radius.

Presiding Examiner: All right, sir.

* * * * * * *

By Mr. Stone:

Q. Mr. Quinn, were you familiar, at the time you negotiated the Shell-Louisiana Natural contract at Chalkley, with the contract in the North Tepetate Field between the Atlantic Refining Company and the Louisiana Natural?

A. I might say I knew such contract existed, that thing was pretty well talked over when the line came in, the [fol. 7] Defense Plant Corporation line. We knew that there was a sale made from this field. We did not have a copy of the contract at the time.

Q. When and under what circumstances did you learn there had been a change in the price under the Atlantic contract in North Tepetate?

A. I don't remember exactly. I do remember that it came as a result of telephone conversation with some of the Atlantic people on some other matter. It just sort of built in there as a passing proposition. I picked it up as being one vital to us and we started work on it.

Q. Can you tell us approximately when you learned of that price?

A. It seems to me it was within 30 days after the signing of the agreement, say probably in March 1954. I don't know exactly.

Q. Then, what did you do after you learned of that new arrangement between Atlantic and Louisiana Natural?

A. Well, we passed the thing around through the company there as to what action should or would be taken. It seems to us that we had a new price coming up and we finally decided that the thing to do was to write a letter to Texas Gas and demand this extra payment.

Q. Did Shell write a letter to—you mentioned Texas Gas. But did Shell write a letter to Louisiana Natural Gas Corporation, relating to that matter?

A. They did.

* * * * * * *

By Mr. Stone:

Q. What happened, if anything, between Louisiana Natural and Shell after that letter was sent out?

A. Well, I know one thing that happened. I think there was some telephone conversation between R. L. Davis and Louisiana Gas. But the thing that I am familiar with is a [fol. 8] meeting we had in our office on this subject, on about February, following this letter.

Q. That would be February 1955?

A. Yes. I believe Mr. Rader and Mr. Stanton came down.

Q. They were from what company?

A. Louisiana Natural, or Texas Gas, whichever they at that time—I believe that was Louisiana Natural. Anyway, Mr. Stanton came down from the Houston office and Mr.

Rader came from the Owensboro office, and we had a meeting. At that time we discussed this thing and were informed that their position was that the favored nations clause had not been triggered and that that was final, as far as they were concerned.

We told them we were just as firmly convinced the other way, and that is the way the meeting ended.

Q. Were any other meetings or telephone calls or conferences held concerning that difference of opinion?

A. Well, I recall that we did say that we would later get together and discuss any new aspects of the situation. This was done, I would say, about sixty days, within that, after that first meeting. And Mr. Rader was there, and I believe Mr. Stanton. I am not sure.

Q. This was the second meeting after the letter?

A. That is right.

Q. Going back to the first meeting, which I think he said took place somewhere around February 1955, did the people attending in behalf of Louisiana Natural leave the matter open, or was it firmly closed at that meeting?

A. I would say that we had decided that we would again discuss the matter. So I guess it was left open.

Q. So then you did again discuss the matter in about—did you mention sixty days or so?

A. Yes.

Q. What came out of the second meeting?

A. There was no progress made on either side, I would [fol. 9] say. Texas Gas was just as firm as in the former meeting, and we were still of our same opinion. So there was nothing decided.

Q. What happened after that; do you know?

A. Well, the thing was turned over to our legal counsel, and that is about where it has been, as far as I know, ever since.

Q. Has Shell ever conceded the correctness of the position taken in those meetings by Louisiana Natural or Texas Gas, as the case might have been?

A. Never.

Q. Has Shell consistently adhered to its view that it was entitled to the higher price Atlantic was receiving at North Tepetate?

A. It has.

Q. How has the billing been handled under this contract between Shell and Louisiana Natural at Chalkley?

A. Well, by billing I imagine you mean that monthly statement?

Q. Billing or invoice or statement.

A. The purchaser issues a monthly statement from the Lake Charles office, and shows volumes, values, shows everything a statement should show, and then a check is later received in the same amount shown on the statement. We make no statements at all on our behalf. Because this is the type of contract where the purchaser does all the paper work in connection with settlement.

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Cross examination.

By Mr. Weston:

Q. No, this is after you learned over the telephone—

A. I see.

Q. —of the possible activation, March, 1954, and before June 7, 1954.

A. I see.

Q. Were you aware, then, of any conversations with [fol. 10] Louisiana Natural concerning your belief that your contract had been activated, or are you aware of any conversation with Texas Gas before June 7, 1954, on this subject; that is to say, every month, March, April, May, June, 1954, you were receiving statements—.

A. Correct.

Q. And you were receiving checks. Did you do anything at that time to say "the amounts of these checks are not enough, the clause has been activated"?

A. We did not do that.

Q. Are you able to explain that in terms of where your offices are located or the people in charge of it not having knowledge, or do you have any idea as to why it took so long to get this underway?

A. Well, the people who received the money, that is the Treasury Department, make no demands of that nature

unless instructed to. We chose to take up this matter by letter, and not clutter up the files with a lot of statements until the thing was clarified. That is about all there was to that.

Q. Is this contract supervised from New Orleans?

A. Yes.

Q. Is the Treasury Department located in New Orleans?

A. Yes.

Q. And you have counsel at New Orleans?

A. Yes.

Q. But you were in the Houston Office?

A. No, I am in the New Orleans office now. I was in the Houston office at the time it was executed.

Presiding Examiner: Let me ask you this: You didn't realize how significant this June 7 date would be, did you, at that time?

The Witness: Not at that time, no, sir.

Presiding Examiner: Nobody else did, either.

* * * * * * *

[fol. 11] W. L. Bowser was called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stone:

Q. Mr. Bowser, by whom are you employed?

A. The Atlantic Refining Company.

Q. In what capacity?

A. Natural Gas Superintendent.

Q. How long have you been employed in the natural gas work of The Atlantic?

A. Since 1941.

Q. Are you familiar with the contract dated September 1, 1943, between The Atlantic Refining Company and Defense Plant Corporation in the North Tepetate Field, Louisiana?

A. I am.

Q. Did you have any part to do with the negotiating of that contract?

ome part of the negotiations.
re you generally familiar with the pricing provi-
f that contract?
enerally.
oes the contract contain an arbitration clause?
t does.

• • • • • • •

By Mr. Stone:

id this contract state a definite formula by which the
could be periodically ascertained, in your opinion?
No definite formula.
What happened under this contract at the end of its
year term; namely, August 31, 1948?
We renegotiated a price for approximately--the first
nths of the second 5-year period, approximately, with
se Plant Corporation, and specified that their succes-
2] sors would be the people we would negotiate for
st 4½ years.
I see. Then what happened when that interim price
ment terminated; I mean, do I understand that at the
the first five years you and Defense Plant Corpora-
hen reached an agreement fixing a price up to some-
n March, 1949?
Yes.
Then what happened at or about March, 1949, when
nterim agreement expired?
We renegotiated a new price. But I would have to
t the fil s to see if that was with D.P.C. or whether
iana Natural had taken over at that time.
If I might refresh your memory, the Supplement No.
ch is Item "F", in this record, shows an agreement
en Atlantic and War Assets Administration.
Oh.
Effective March 1, 1949. Is that the agreement to
you had reference?
Yes, sir.
What was the gist of that agreement?
It merely specified the price until September 1, 1953.

Q. As September 1, 1953 approached, did you receive any word from Louisiana Natural Gas Corporation with reference to that contract?

A. We got a letter from them saying they were ready to renegotiate the price under the contract.

* * * * * * *

By Mr. Stone:

Q. Exhibit 4, as you have mentioned, requested that Atlantic advise Louisiana Natural when and where they would like to open the negotiations. What happened between the two companies with respect to this matter after receipt of that letter?

A. Well, now, I am not going to try to tie it down to specific dates.

Q. All right.

A. We had several meetings, myself, Mr. Echols, Mr. [fol. 13] Carr and Mr. Marston, from Atlantic, participating in the various meetings. I believe Mr. Echols and I were possibly the only ones participating in all of them.

For Louisiana Natural there was a Mr. Adams, Mr. Mann, Mr. Hussey, and Mr. Morton, who participated, and in the—in the various meetings. I think Mr. Adams was the only one who attended all of the meetings.

Q. Mr. Adams is Mr. B. C. Adams, Jr., Vice President of Louisiana Natural?

A. That is right.

Q. And Mr. Mann is Mr. H. L. Mann, Vice President of Louisiana Natural?

A. He was at that time.

Q. Continue, please.

A. We discussed various and sundry parts of the contract, one of the items we discussed being this renegotiation provision, take provisions, and price. After quite a bit of discussion it didn't look like we were coming to a meeting of the minds on any of the other provisions of the contract, so that we finally settled on price only. They presented—

Q. When you say you finally settled on price only, you mean you finally settled on that as an issue of negotiation?

A. We didn't specifically rule out anything else. The only thing we came to a successful conclusion on was price.

Q. I see.

A. They presented some figures showing prices in southwest Louisiana and we presented some figures showing price in southwest Louisiana, that were markedly different. I would say the final series of meetings boiled down to negotiation as to where we were going to wind up between those two prices.

Q. In connection with those meetings, did you submit—excuse me. Did Atlantic submit to Louisiana Natural a breakdown of the prices as they consider it to be?

A. Yes. We sent them a tabulation showing prices in the southwest Louisiana area.

Q. I show you a document marked for identification Ex- [fol. 14] hibit 3, and ask you if that is the letter and the tabulation your company submitted to Louisiana Natural.

A. Yes, it is.

Mr. Stone: I offer in evidence as Exhibit No. 5 the document heretofore identified by that number and being a letter from B. F. Carr to Louisiana Natural Gas Corporation, dated February 2, 1954, attaching two pages of tabulation of prices.

Mr. Becker: No objection.

Presiding Examiner: It is admitted.

(The document above referred to, heretofore marked Exhibit No. 5, was received in evidence.)

By Mr. Stone:

Q. Did Louisiana Natural submit to you certain tabulations of prices which they found to prevail?

A. Yes.

Q. I show you a document which has been marked Exhibit 6, for identification, and ask you if that is the tabulation Louisiana Natural submitted to Atlantic.

A. Yes.

Q. I show you another document marked Exhibit No. 7, for identification, titled "Louisiana Natural Corporation",

and ask if that is also a tabulation of prices, buyers, sellers, and so forth, submitted to Atlantic by Louisiana Natural.

A. Yes sir.

Mr. Stone: We offer in evidence as Exhibit 6 the document previously so marked, styled "From Texas Gas, 2-8-54," being average of major pipeline company prices in south Louisiana, and so forth.

Mr. Becker: I have no objection. As I understand, then, both these papers were submitted by Texas Gas to Atlantic?

The Witness: Yes.

Mr. Stone: I also offer in evidence Exhibit No. 7.

[fol. 15] Mr. Becker: No objection.

Presiding Examiner: Six and 7 are admitted.

(The documents heretofore marked Exhibit Nos. 6 and 7, for identification, were received in evidence.)

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By Mr. Stone:

Q. In the course of these negotiations, what price did Louisiana Natural contend should apply?

A. Well, they were talking about the 8.997 as being the price, whereas we—that was, in general, their position.

Q. From 8 to 9 cents?

A. Around 8.99 cents.

Q. A thousand?

A. Yes.

Q. How did they arrive at that figure?

A. The tabulation that they furnished indicated that there was a lot of gas moving at around that price. That was also their price in other contracts in the general vicinity.

Q. Did they take the position that prevailing prices, as used in the contract, mean the prices then being paid for gas which was under contract?

A. I don't know that I can say what position they took.

Q. I see. But they did come up with the 8.997 cents?

A. Yes.

Q. What price did Atlantic contend for?

A. We came up with the contention that the price we were talking about was prices that were being paid for gas

that was being bought and covering the period that we were negotiating for; in other words, if the contract was written in 1952 and provided prices in, say 1953 to 1958, those prices from '53 to '58 were the ones we used in arriving at our averages we were contending for.

Q. You would take the going contracts and look and include all of their price provisions, escalation and otherwise, [fol. 16] and see what they would be in this future 5-year period?

A. That was our position.

Q. That is, in general, how you arrived—

A. That is reflected in the table we prepared and sent to them.

Q. All right. What did you think was meant by the expression "prevailing prices in southwestern Louisiana?"

What do you think was meant by "southwestern Louisiana"?

A. We never did pin it down. We just took the best prices we could find in that general area. And they didn't draw any lines as to what was southwestern Louisiana. There are none specified in the contract.

Q. With reference to the expression "prevailing prices", did you feel bound by a price if there had been agreement upon it being the prevailing price?

A. Well, when you put that word "agreed" in there—in other words, the contract says that the two parties are going to agree. And if we agreed on a prevailing price, I think that would be it.

Q. Would a prevailing price necessitate agreement between the two of you?

Do you understand what I am trying to get at? I can explain the question a little further.

A. The thing I can't get around is that the contract says we are going to agree, we are going to make a survey of prevailing prices, and then agree on a price. And for purposes of the ensuing 5-year period, I don't think we would have had a prevailing price unless we had come to agreement on it. You see what I mean? I think both parties had to agree. And that was really the point of departure. We said one thing was the prevailing price and they said something else was.

Q. So, in other words, the contract did not specify a [fol. 17] definite formula under which you would determine "prevailing price"?

A. It did not.

Q. Perhaps you have answered this question, but what price was Atlantic contending for? Can I get that?

A. We were contending for, in the range of 16 cents. That is our—our tabulation will show.

Q. I see. And finally agreement was reached on 12.2, plus Louisiana gas severance tax, plus gathering tax?

A. That is right.

Q. How was that agreement reached; how did you finally come to agreement?

A. Well, I know we had a meeting, I know Ben Adams was there, myself and Mr. Marston and—well, we finally haggled back and forth and said—they said, "This is as high as we are going", and we said, "Well, we will see if we can get that agreed to." And discussed it with top management, reached an agreement, then drew the letter of agreement.

Q. Could you say you horse-traded it out?

A. Oh, yes.

Q. If you recall, how many meetings took place before you came to this final agreemeat?

A. I would hate to try to pin it down to a number. I know there were at least four, and there were numerous phone conversations.

Q. I see. And over what period of time did this take place?

A. It started about August and we finalized the thing about the middle of February, I believe it was.

Q. Would that be August, 1953?

A. Yes. It would be September—5½ months, roughly. Is that right, somebody?

Q. Then was the agreement reduced to writing?

A. Yes.

Q. Who prepared the writing evidencing the agreement between the parties?

A. I believe we prepared the first draft and sent it to them. They modified it and sent it back, we didn't like [fol. 18] their modification, so we modified it again and sent

it back, and that was the one finally executed. As far as I know, the two, the first draft and the draft they made have been destroyed, as far as I know. I know the copy they returned to us has been destroyed.

Q. I show you a document which has been marked as Exhibit No. 9, for identification, and ask you if that is the written contract which embodies the agreement entered into between Atlantic and Louisiana Natural.

A. It is.

Q. I notice the date on that at the top of the letter says February 17, 1954. And it is on the Atlantic Refining Company's stationery. So am I correct in assuming from that that Atlantic signed this document and mailed it to Louisiana Natural Gas Corporation in Shreveport, Louisiana, for their signature?

A. Yes, sir.

Q. At the lower left I notice it says "Agreed to and accepted this 22nd day of February, 1954, Louisiana Natural Gas Corporation, by H. L. Mann, Vice President."

Am I correct in assuming from that that Louisiana Natural accepted the contract in Louisiana and then returned it to you?

A. Yes.

Mr. Stone: We offer in evidence as Exhibit 9 the document previously marked—previously so identified, being document dated February 17, 1954, from the Atlantic Refining Company to Louisiana Natural Gas Corporation.

Mr. Becker: No objection.

Presiding Examiner: It is admitted.

(The document heretofore marked Exhibit No. 9, for identification, was received in evidence.)

By Mr. Stone:

Q. Did Louisiana Natural Gas Corporation return the executed document to you along with a letter of transmittal? [fol. 19] I say "to you." I mean, of course, to the Atlantic Refining Company.

A. I believe so, yes.

Q. I show you a document marked for identification Ex-

hibit 10, for identification, and ask if that is the letter of transmittal which accompanied the February 17, 1954 document, the latter being Exhibit 9.

A. Yes.

Mr. Stone: We offer in evidence as Exhibit No. 10 letter of transmittal from Louisiana Natural Gas Corporation to the Atlantic Refining Company, signed by H. L. Mann, Vice President.

Mr. Becker: No objection.

Presiding Examiner: It is admitted.

(The document above referred to was marked Exhibit No. 10 for identification and received in evidence.)

By Mr. Stone:

Q. Referring to Exhibit 10, it is signed by H. L. Mann, Vice President. Was he one of the representatives from Louisiana Natural Gas Corporation who took part in the negotiations?

A. He participated in some of the negotiations.

Q. But the price was agreed upon between the parties without reference to arbitration, was it not?

A. Oh, yes, that is right.

Q. You did not submit it to arbitration?

A. No, indeed.

• • • • • • •

E. S. Quinn was recalled as a witness, having been previously duly sworn, was examined and testified further as follows:

Mr. Becker: I would like to request that we mark a series of exhibits by reference. I think it can be given a single letter, Texas Gas "A". What it consists of is a list, with [fol. 20] copies, of contracts filed by Shell with the Federal Power Commission as gas rate schedules, containing price-type most favored nation provisions, and in each case I have indicated what the Shell F.P.C. gas rate schedule number is.

I request that be marked as Texas Gas Exhibit by refer-

ence No. "A", for identification. I am not offering it at this time.

Presiding Examiner: Let's get the identification letter. We have to keep this in sequence. So the next would be "J". And if you take the index to this list and simply go down the alphabet until you come to the end, if you do, then you can double "A", double "B", and go on down to the end. They will be so identified.

Mr. Becker: It will fall far short of that.

Mr. Stone: Is this now identified as Item "J"?

Presiding Examiner: Yes.

(The document above referred to was marked Item "J", for identification, by reference.)

Mr. Becker: These are copies of the documents on file. What I propose to do is call the attention of the witness to one of the paragraphs in here to get his understanding that that is a paragraph in a Shell contract. I could go through the entire list and do that with each one in here, but I think you have some guarantee of authenticity from the fact these are on file with the F.P.C., and I so certify.

Mr. Stone: Before you go into that, I want to object, but you might clarify the purpose of your offer. To begin with, I don't think this witness is qualified to go into that. Secondly, what is provided in some other contract not at issue in this case is neither pertinent nor material to this case. What Shell may have done or we may have received [fol. 21] when selling gas to somebody else under different circumstances, or where we may be buying gas—I don't know what this is, I haven't looked at it. I do want to make that objection, that these documents are not admissible and we object to their incorporation into this record by reference.

Therefore, I see no need to mark them at this time. Because what is said or done in another contract is not material nor relevant to the issue in this case.

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Mr. Stone: Mr. Examiner, I made an objection at the outset that evidence concerning any other contracts is not

admissible in this case. I would like to reiterate that objection to this question and to similar questions.

Mr. Becker: I would like the privilege of attempting to qualify the exhibit.

Presiding Examiner: Well, the exhibit is entirely extraneous to any matter before the Examiner at this time. And it seems unnecessary to qualify an exhibit that pertains to a matter not under consideration.

Mr. Becker: Mr. Examiner, we have in this case a certain Shell contract which has specific language as to what shall happen with respect to a triggering of the price. Now, Shell is taking the position that this particular clause has a certain meaning, and I think it is very relevant and material that Shell has other clauses in its contracts for the sale of gas which are also favored nations clauses and which say in so many words that the events which Shell now claims triggered this contract shall trigger other contracts. But you will find, when you examine the clauses, the language is entirely different from the clause they are relying on. This is a case where Shell Oil Company has those contracts, and I think it is competent for us to show the difference in the language of the clauses and infer therefrom a difference in the meaning of what shall be [fol. 22] done thereunder.

Mr. Stone: I would like to say I am pleased to hear counsel recognize that there is ambiguity in the clause under the Shell contract. But I insist what was said or done in other contracts, we don't know who prepared them, circumstances under which negotiated, and what was provided for in other contracts is not relevant or material to the question before the Commission in this contract.

It is what does the Shell contract mean that is in issue here, not what some other contract means.

Mr. Becker: These are other equally unambiguous contracts and the difference is striking.

Mr. Stone: Our purpose here is to resolve and determine the ambiguity in this particular contract.

Mr. Weston: Mr. Examiner, this is a filed document with the Commission, of which this Commission can take notice to help them in determining a meaning for the specific contract in question, or specific filing in question.

Mr. Stone: I will agree with counsel that the Commission is certainly able to take notice of its own records. I don't agree that it is proper for the Commission to take notice of an irrelevant or immaterial document, even though it may be among the Commission's records.

Presiding Examiner: It should be done on a notice to all parties, and if it is ever done the way this is attempted to be done, if it is done at all. As far as taking notice, it is my view of the matter, and I think it is the generally accepted view, legally speaking, that the Commission must stay within the record. Some things it knows—can't help but know. It knows there are other forms of clauses. That is what counsel refers to. It can't help but take notice of that. And that isn't exactly taking notice. I am not trying to criticize the words. But the point is you can't get away [fol. 23] from the fact they do know there are other clauses. And they are refreshing their memory as to the kinds of clauses there are by looking at any papers they want to. But that is simply to utilize expert knowledge.

Mr. Weston: If there is a trade practice as to certain type of clause, then it is proper to have that trade practice in this record, as I see it.

Presiding Examiner: That is right. Frankly, it seems to me this is getting more complex than it needs to. I hate to see this whole group of things referred to. On the other hand, they are not burdening the record by being documents.

Later, of course, if there should be appeal to the courts, you gentlemen will have to agree on what is necessary to copy, and these things must be copied just as much as the others if they are deemed then relevant to the appeal. I don't see any objection.

Now, this all stems from a question that has been asked, and an objection. This is my view, that I see no objection to this witness being asked: "Is there some other clause?" Or even having it called to his attention there is some other clause, and say Shell has entered into contracts with a different kind of favored nation clause. That is all he is trying to prove.

Mr. Stone: I object to that, because what Shell has done in some other case, to me, is not relevant nor material. Hence not admissible in this case.

Presiding Examiner: I think it is relevant. I don't know how much weight it has. It depends on how it is hooked up. I can't exclude it merely because it has small weight. It has to be potentially without any weight before I can ignore its relevance.

Mr. Stone: It seems to me when two parties make a contract and specify one thing in it, and thereafter one of [fol. 24] those parties makes another contract under different situations with another person, and puts another clause in the other contract, to me that really has no bearing on ascertaining what the parties intended by the first contract.

Presiding Examiner: I don't think that is being done. I think what he is getting at is simply one basic question: Have there been other clauses in contracts in Shell's own contracting experience? That is all he is asking.

What is the question?

Mr. Becker: I will be glad to repeat it, Your Honor.

Presiding Examiner: All right.

By Mr. Becker:

Q. Will you look at the index to Exhibit No. "J" and will you tell me if any one of those contracts was negotiated by you?

Mr. Stone: The index doesn't show the page or anything, just refers to the rate schedule number; is that it?

Mr. Becker: Yes. I thought he might identify it by the index.

The Witness: Well, these company names mean something, but I will have to identify the field, in order to see if—

By Mr. Becker:

Q. Mr. Quinn, you have called my attention to a paper contained in this Exhibit "J", which is an agreement dated March 29, 1955, between Tennessee Gas Transmission Company and Shell Oil Company, which constitutes Shell's F.P.C. Gas Rate Schedule No. 130. And I call your attention to the first full paragraph on the second page of that contract and ask if you would read it.

A. "If at any time and from time to time after the date here of (sic) the cost per Mcf of gas purchased by buyer from any gas producer whomsoever in fields located in whole or in part within the contract area, shall be greater than the cost per Mcf of gas purchased hereunder, buyer [fol. 25] will increase the price per Mcf payable to seller for gas delivered hereunder currently as deliveries are made, and only during periods in which buyer is paying such greater cost to such other gas producer by an amount equal to the difference between highest cost per Mcf paid at the time by buyer to any such gas producer and the cost per Mcf payable hereunder."

Q. Now, Mr. Quinn, have you, in other contracts that you have negotiated on behalf of Shell Oil Company, used most favored nation clause substantially the same as that clause?

Mr. Stone: I object, Mr. Examiner. Counsel is trying to elicit now testimony as to just exactly what was done in other contracts. That is not relevant nor material here. The contract which we have before the Commission at this time is the law between the parties, not some contract made between other parties.

Mr. Becker: I think on cross-examination I should be permitted to ask him what he has done in negotiating contracts.

Mr. Stone: Not if it is not relevant to this proceeding, nor material.

Presiding Examiner: Well, I am not sure—I can't accept your objection. I would like to go along, try to show as reasonable a ground as possible, without seeming to argue. It seems to me relevant to know whether they have used one clause or several clauses. I think it is relevant, as something that casts light on the setting in which the controversy lies.

Mr. Stone: Here is the contract he is talking about, March 29, 1955.

Mr. Becker: I asked him whether substantially the same clause was used in other contracts they negotiated.

[fol. 26] Mr. Stone: But the contract you had the man quote from was in 1955. That only goes to emphasize to me the irrelevance of the evidence. It is irrelevant if he at-

tempts to introduce evidence of what they do even contemporaneously.

Presiding Examiner: I am going to let him answer. I think it is relevant to know if he has used similar clauses or other clauses, so he may answer.

* * * * * * *

Presiding Examiner: If these are incorporated by reference so that they may be examined as part of the record, haven't you proceed (sic) by admission of the company itself that they use other clauses?

Mr. Becker: I think I have, Your Honor. And I think I have gone far enough along this line in order to offer Exhibit "J".

Mr. Stone: Mr. Examiner, I would like to repeat my objection to the reception—

Presiding Examiner: I have your objection in mind. But I repeat, I think it is relevant as to whether or not there are different clauses used. If you stop and study the matter after you make such a record, you might find it to your advantage.

Mr. Stone: I noticed one in here that I do think is to my advantage. But I don't think the stuff ought to come in.

Presiding Examiner: I think other contracts throw some light on the contract (sic) of this one.

Mr. Stone: He hasn't shown these are all of the Shell [fol. 27] contracts that have been filed.

Mr. Becker: Your Honor, we tried to gather as many as we could. We weren't certain which ones this particular gentleman had negotiated.

Presiding Examiner: I am not very happy with as many as you have. I think your point is made with one or two, the point solely being that there are other types of first-party favored nation clauses.

Mr. Stone: All right, let it go.

Presiding Examiner: We are somewhat acquainted with these. We have had a few of them before.

Mr. Weston: From the Staff point of view, I would make this point, that there is no showing, certain, to date, of any trade practice in the formation of given categories

ses into which the present controversy will fit, or
ner controversy; however, this does throw at least
ght on the general subject.
iding Examiner: The situation in which the con-
on must take place.
Weston: Yes.
iding Examiner: While it doesn't necessarily tell
w to construe the words in the contract at issue here,
tell you you have to construe those words, not some
words, because there isn't any cut and dried pattern
fits into. That is why it is just as advantageous to
not more—
Stone: That is my point. I think all we have to do
rue the words of the Shell contract, and these others
othing to do with it.
I think Your Honor has made your position clear
t.

• • • • • •

] By Mr. Weston:

he length of time involved herein between the trig-
and the first notice that Texas Gas had seems to me
f some importance. Is that a customary length of
would you say, in your experience; does it take a
of six or eight or nine months for you to communi-
your buyers the fact that they owe you money? I
mind here you have a responsible buyer, no doubt
etting the money back, all that. And I am not trying
nate here any view on the thing, except I would like
why it took so long.
Well, I guess it did take quite a while for Shell to
p its mind to follow this thing through. We took
ime out for the Legal Department to look into this
As a matter of fact, we took some time among our-
before it was ever submitted to the Legal Depart-
took some time there for them to render a decision.
I say the time was a little bit longer than normal.
metimes things just simply go along slowly. It has
ed even in the preparation of contracts sometimes.

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[fol. 29]

EXHIBIT No. 2

SHELL OIL COMPANY
NEW ORLEANS AREA
RICHARDS BUILDING
P. O. BOX 193
NEW ORLEANS 3, LOUISIANA

October 11, 1954

Subject: Gas Purchase Agreement between Louisiana Natural Gas Corporation and Shell Oil Company, Chalkley Field, Cameron Parish, Louisiana.

Louisiana Natural Gas Corporation
P. O. Box 1840
Petroleum Building
Shreveport, Louisiana

Gentlemen:

It is our understanding that you have recently entered into an agreement with The Atlantic Refining Company calling for a price of 12.2¢ (plus .3¢ reimbursement for severance taxes) per thousand cubic feet for gas produced from the North Tepetate Field in Acadia Parish, Louisiana. As you know, this field lies within 50 miles of the point of delivery for the gas which is being sold by Shell to Louisiana Natural under the Chalkley contract.

If our understanding of this matter is accurate, it would appear that under Subsection 3, Article VI of our Chalkley Field contract, you should have given us notice of the new agreement and also the benefit of the higher price. The fact that the recent agreement with Atlantic may have been a price renegotiation does not, in our judgment, prevent it from being a "contract" under the wording of Subsection 3. Likewise, we feel that the purposes of the [fol. 30] "favored nations" clause would be as well served in this situation as in any other.

Accordingly, our position is that under our agreement we are entitled to a price of 12.5¢ retroactive to September 1,

1953, the date we understand the higher price at North Tepetate became effective.

Please advise us as to the position your company intends to take in this matter.

Yours very truly,

/s/ R. L. Davis
R. L. Davis, *Manager*
Area Gas Department

Original Signed
By R. L. Davis

EXHIBIT No. 4

LOUISIANA NATURAL GAS CORPORATION
PETROLEUM BUILDING
P. O. BOX 1840
SHREVEPORT, LOUISIANA

August 27, 1953

Registered Return Receipt
The Atlantic Refining Company
Magnolia Building
P. O. Box 2819
Dallas, Texas

Attention: Mr. W. L. Bowser

Gentlemen:

Louisiana Natural Gas Corporation is purchasing gas from properties of the Atlantic Refining Company in the [fol. 31] North Tepetate Field, Acadia Parish, Louisiana under a contract dated September 1, 1943. That contract was amended under date of October 26, 1948 to increase the price and was again amended under date of February 16, 1949 to further increase the price and to change certain quantity provisions of the original contract. The price provisions of the above referred to amendments expire on August 31, 1953.

Paragraph (c) of Article III of the original contract provides for price redetermination for each five-year period. You are hereby notified of our willingness to commence negotiations with you concerning such price. It is requested that you advise us when and where you would like to open such negotiations.

Yours very truly,

LOUISIANA NATURAL GAS CORPORATION
By B. C. ADAMS, JR.
Vice President

BCAjr/s

[fol. 32]

EXHIBIT No. 5

February 2, 1954

File: AR-2798

Air Mail Special Delivery

Louisiana Natural Gas Corporation
Melrose Building
Houston, Texas

Attention: Mr. Ben C. Adams

Re: North Tepetate Field,
Acadia Parish, Louisiana

Gentlemen:

Pursuant to our last discussions, attached for your information are tables showing various average prices in Southwestern Louisiana.

Very truly yours,

B. F. CARR
Natural Gas Section

DDE/rmt
attachments

TABLE I

3 HIGHEST

	Transcontinental	Gulf-Interstate	United	Average
	(11/1)	(11/1)	(10/1)	
53-54	8.790	—	12.417	10.604
54-55	14.798	*16.000	13.417	14.664
55-56	16.000	16.333	14.417	15.583
56-57	16.000	16.733	15.417	16.050
57-58	16.000	17.133	+ 16.775	16.636

*10 mo. del. + 2 highest: 16 + 17.133 14.707 Average

[fol. 33]

TABLE II

4 HIGHEST

	Transcontinental	Gulf-Interstate	Interstate	United	Average
	(11/1)	(11/1)	(8/11)	(10/1)	
53-54	8.790	—	11.000	12.417	10.736
54-55	14.798	*16.000	11.000	13.417	13.708
55-56	16.000	16.333	11.000	14.417	14.438
56-57	16.000	16.733	11.696	15.417	14.962
			(11.000 to 1/1/57)		
57-58	16.000	17.133	12.000 min.	+16.775	15.477
		*10 mo. del.			13.864 Aver.
				+ 2 highest: 16 + 17.133	

TABLE III

4 HIGHEST + TEX.-NORTH (5 HIGHEST)

	Transcontinental	Tex-North	Gulf-Interstate	Interstate	United	Aver.
	(11/1)	(8/22)	(11/1)	(8/11)	(10/1)	
53-54	8.790	8.997	—	11.000	12.417	10.301
54-55	14.798	8.997	*16.000	11.000	13.417	12.734
55-56	16.000	9.019	16.333	11.000	14.417	13.354
56-57	16.000	9.897	16.733	11.696	15.417	13.949
				(11.000 to 1/1/57)		
57-58	16.000	9.897	17.133	12.000 (min.)	+ 16.775	14.361
			*10 mo. del.			12.940
					+ 2 highest: 16 = 17.133	

TABLE IV

3 LOWEST

	Tennessee Gas	Tex.-North	Trunkline	Aver.
	(11/1)	(8/22)		
53-54	8.322	8.997	8.46	8.593
54-55	9.072	8.997	8.63	8.900
55-56	9.222	9.019	8.81	9.017
56-57	9.222	9.897	8.99	9.370
57-58	9.222	9.897	9.17	9.430
				9.062

[fol. 34]

Exhibit No. 6

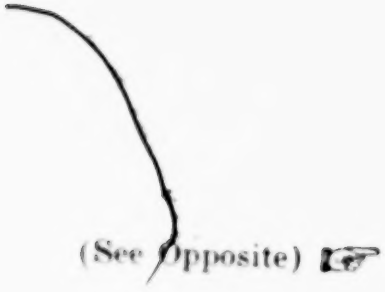


Exhibit No. 6

AVERAGES OF MAJOR PIPE COMPANY PRICES IN SOUTH LOUISIANA SHOWING HIGHEST PRICES ESCALATED OVER FIVE YEARS WITH ESCALATION BASED ON SEPTEMBER 1 CONTRACT DATE

Transco.	Gulf-Int.	United	Interst.	Tex No.	Tenn.	Trunk	Total	7 Cos. Ave.	Without Transco.	Without Transco. and Gulf-Int.
8,790	—	12,417	11,000	8,997	8,322	846	57,996	9,666	9,839	9,839
14,798	*16,000	13,417	11,000	8,977	9,072	863	—	11,599	11,048	10,223
16,000	16,333	14,417	11,000	9,019	9,222	881	84,801	12,114	11,467	10,494
16,000	16,733	15,417	11,696	9,897	9,222	899	87,955	12,565	11,993	11,044
16,000	17,133	16,775	12,000	9,897	9,222	917	90,917	12,988	12,341	11,413
							Ave.	11.786	11.338	10.603

* 10 Mos. (use number of months for Avg.)

BCA/c
2/3/54

[fol. 35]

Exhibit No. 7

(See Opposite) ☞

Exhibit No. 7

LOUISIANA NATURAL GAS CORPORATION

PRICES OF GAS BEING SOLD IN SOUTHWEST LOUISIANA IN SIMILAR QUANTITIES TO THOSE UNDER OUR CONTRACT COVERING ATLANTIC REFINING COMPANY'S PROPERTIES IN NORTH TEPETATE FIELD

Buyer/Seller	Field	Contract Price @ 15.025#.	Provisions Which Effect Price			Equivalent Price
			Taxes Paid By Buyer	Delivery Pressure	Dehydration	
TRUNKLINE GAS SUPPLY CO.						
Superior Oil Co.	Grand Lake Pecan Island Lakeside	8.45718¢	1.137¢	0	.225¢	9.81915¢
Grubb and Hawkins	Lakeside	8.45718¢	1.137¢	0	.225¢	9.81915¢
TRANS-CONTINENTAL GAS PIPELINE						
Union Oil of California La. Land & Exploration	Vinton West White Lake Tigre Lagoon Fresh Water Bayou East White Lake	8.79715¢	0	0	0	8.79715¢
Magnolia Petroleum Co.	West Gueydan	8.79715¢	0	0	0	8.79715¢
Sun Oil Co. & Sohio Petroleum	Egan	8.79715¢	0	0	0	8.79715¢
TENNESSEE GAS TRANSMISSION						
Sohio Petroleum Co.	Grand Chenier Hog Bayou Duson Iota	8.3222¢	1.3¢	0	0	9.6222¢
Atlantic Refining Co.	Bayou Sale	8.3222¢	1.3¢	0	0	9.6222¢
Marine Gathering Co.	Gulf of Mexico	8.3222¢	1.3¢	0	0	9.6222¢

Buyer/Seller	Field	Contract Price @ 15.025¢	Provisions Which Effect Price: Taxes Paid By Buyer	Delivery Pressure	Dehydration	Equivalent Price
UNITED GAS PIPELINE CO.						
Continental Oil Co.	Abbeville	8.0973¢	1.3¢	.25¢	.225¢*	9.8723¢
Magnolia Petroleum Co.	Mud Lake East Mud Lake Holly Beach Cameron Meadows	8.0973¢	1.3¢	0	.225¢	9.6223¢
UNITED GAS PIPE LINE CO.						
Continental Oil Co., et al.	St. Martinville	8.0973¢	.3¢	0	.225¢*	8.6223¢
Shell Oil Co.	Weeks Island, Iowa	8.9970¢	1¢	0	.225¢*	10.2220¢
Pure Oil Co. & Sun Oil Co.	Eugene Island Area	8.9970¢	1¢	—.25¢	0	9.4970¢**
TEXAS NORTHERN GAS CORP.						
Union Sulphur & Oil Corp.	Lewisburg South Bayou Mallet Church Point	8.9970¢	1¢	0	.25¢	10.2470¢
LOUISIANA NATURAL GAS CORP.						
Shell Oil Co.	Chalkley	8.9970¢	1¢	0	.225¢	10.2220¢
Hassie Hunt Trust	Maxie	8.9970¢	1¢	0	.25¢	10.2470¢
Union Sulphur & Oil Corp.	Choupique Gillis Roanoke South Roanoke Welsh Woodlawn Lake Arthur	8.9970¢	1¢	0	.25¢	10.2470¢

* Contract Summary in F.P.C. Docket silent on dehydration. United advises that Seller is required to dehydrate in only a few of their Southwest Louisiana contracts; therefore, it is assumed that obligation is on Buyer in these cases.

** This gas delivered on offshore platforms; hence, equivalent price reduced by .25¢/MCF, as gathering charge, in order that this price will be on comparable basis with others listed herein which are paid for gas delivered at central point on land.

[fol. 37]

EXHIBIT No. 9

THE ATLANTIC REFINING COMPANY
ATLANTIC BUILDING
DALLAS, TEXAS

February 17, 1954

Re: Our File: Contract AR-2798

Louisiana Natural Gas Corporation
P. O. Box 1840
Petroleum Building
Shreveport, Louisiana

Gentlemen:

Under date of September 1, 1943, Defense Plant Corporation, as Buyer, entered into a gas purchase contract with The Atlantic Refining Company, as Seller, for the purchase of gas produced from Seller's leases in the North Tepetate pool of Acadia Parish, Louisiana, which contract was subsequently amended February 16, 1949. Louisiana Natural Gas Corporation purchased the pipe line operated by Defense Plant Corporation and the aforesaid contract with The Atlantic Refining Company was assigned to Louisiana Natural Gas Corporation.

In accordance with Paragraph III of said contract, it is hereby agreed that the price to be paid by Louisiana Natural Gas Corporation to The Atlantic Refining Company for gas sold and delivered under such contract between September 1, 1953, and August 31, 1958, both inclusive, shall be 12.2 cents net for each 1,000 cubic feet at a pressure base of 15.025 psia of gas received at the central point or points set forth in the original contract, regardless of whether such gas is delivered to a government plant or not; and, in addition, Buyer shall reimburse Seller for [fol. 38] all state severance taxes, or similar taxes, which Seller is obligated to pay and has paid to the State of Louisiana on such gas.

Yours very truly,

THE ATLANTIC REFINING COMPANY

By /s/ J. N. MENDENHALL
General Manager of Domestic Crude Oil Production

AGREED to and ACCEPTED this
22nd day of February, 1954.

LOUISIANA NATURAL GAS CORPORATION

By /s/ H. L. MANN
Vice President

EXHIBIT No. 10

LOUISIANA NATURAL GAS CORPORATION
P. O. BOX 1840
SHREVEPORT, LOUISIANA

OPERATING OFFICE
PIONEER BUILDING
LAKE CHARLES, LA.

February 22, 1954

The Atlantic Refining Company
P. O. Box 2819
Dallas 1, Texas
Attention: Mr. Danny D. Echols

Gentlemen:

In accordance with your letter of February 19, we are enclosing two (2) executed copies of letter agreement dated February 17, 1954, covering the sale of gas, Acadia Parish, Louisiana.

[fol. 39] In accordance with your request, we are also returning your letter of February 12 together with four (4)

copies of the previous agreement. You will note that I had signed this agreement, but signature has been struck out.

Thanks very much for your cooperation.

Yours very truly,

/s/ H. L. MANN
H. L. Mann
Vice President

HLM:a
encls.

Received Feb. 23, 1954
Natural Gas Sect.

EXHIBIT No. 11 (Excerpts)

LOUISIANA NATURAL GAS CORPORATION
PIONEER BUILDING
P. O. BOX 1299
LAKE CHARLES, LOUISIANA

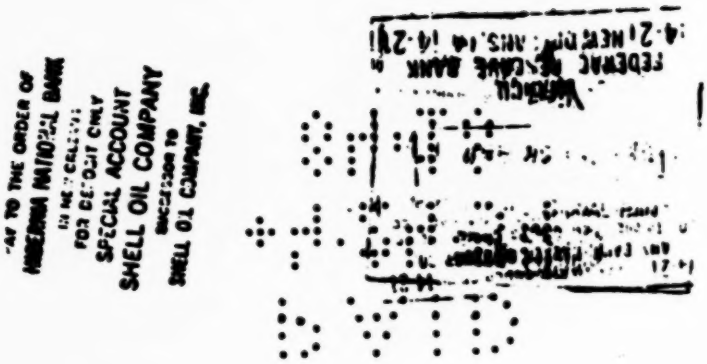
Date March 31, 1954

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana

We credit your account as follows:

For gas purchased from Chalkley Field, Cameron Parish, Louisiana, during March, 1954.
Meter No. 4404, 418,843 M.C.F.
418,843 M.C.F. (15.025 psi) @ .089970 per M.C.F. $37,683.30

[fol. 41]



LOUISIANA NATURAL GAS CORPORATION
LAKE CHARLES, LOUISIANA

VOUCHER NO. 4-69
CHECK NO. 8086
DATE April 21, 1954

PAY TO THE ORDER OF

$ 37,483.30

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana

LOUISIANA NATURAL GAS CORPORATION

E. E. Alexander

To CALCASIEU-MARINE NATIONAL BANK
LAKE CHARLES, LOUISIANA

[fol. 43] [In addition, Exhibit 11 contains 35 other sets of credit memoranda and checks for each month during the period from April 1954 through February 1957 which are substantially similar to the credit memorandum and check printed immediately above [R. 149-218].]

EXHIBIT No. 12

AUDITORS' CONFIRMATION LETTERS
SHELL OIL COMPANY
ARTHUR ANDERSEN & CO.

LOUISIANA NATURAL GAS CORPORATION
PIONEER BUILDING
P. O. BOX 1299
LAKE CHARLES, LOUISIANA

January 21, 1954

Shell Oil Company
Richards Building
New Orleans, Louisiana

Gentlemen:

Messrs. Arthur Andersen & Co., Independent Public Accountants, are now engaged in an audit of our accounts. In connection therewith, they desire to confirm the amount of our indebtedness to you at December 31, 1953, which was shown by our records as being $38,424.30.

Kindly state in the space below whether or not this is in agreement with your records as of December 31, 1953. If not, please furnish any information you may have which will assist the auditors in locating the difference.

[fol. 44] Your prompt attention to this request will be greatly appreciated. After signing the statement below, please mail direct to Arthur Andersen & Co., Railway Exchange Building, St. Louis 1, Missouri, in the enclosed envelope.

Yours very truly,

LOUISIANA NATURAL GAS CORPORATION

/s/ RICHARD C. YOUNG
Richard C. Young
Assistant Treasurer

RCY:jt

The above balance of $38,424.30 agrees with our records at December 31, 1953, with the following exceptions (if any):

— None —

Signed M. D. FYFE
Chief Accountant
Shell Oil Company

Date: January 28, 1954

LOUISIANA NATURAL GAS CORPORATION
PIONEER BUILDING
P. O. BOX 1299
LAKE CHARLES, LOUISIANA

August 10, 1954

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana

Gentlemen:

Messrs. Arthur Andersen & Co., Independent Public Accountants, are now engaged in an audit of our accounts. [fol. 45] In connection therewith, they desire to confirm the amount of our indebtedness to you at June 30, 1954, which was shown by our records as being $37,273.94.

Kindly state in the space below whether or not this is in agreement with your records as of June 30, 1954. If not, please furnish any information you may have which will assist the auditors in locating the difference.

Your prompt attention to this request will be greatly appreciated. After signing the statement below, please

mail direct to Arthur Andersen & Co., Railway Exchange Building, St. Louis 1, Missouri, in the enclosed envelope.

Yours very truly,

LOUISIANA NATURAL GAS CORPORATION

E. C. ALEXANDER
Assistant Treasurer

ECA/ll

The above balance of $37,273.94 agrees with our records at June 30, 1954, with the following exceptions (if any):

None

Signed /s/ M. D. FYFE, *Chief Accountant*

By SHELL OIL COMPANY

Date

[fol. 46]

LOUISIANA NATURAL GAS CORPORATION
PIONEER BUILDING
P. O. BOX 1299
LAKE CHARLES, LOUISIANA

April 21, 1955

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana

Gentlemen:

Our auditors, Arthur Andersen & Co., Railway Exchange Building, St. Louis 1, Missouri, are now engaged in an audit of our accounts. In connection therewith, they desire to confirm the amount of our indebtedness to you at March 31, 1955, which was shown by our records as being $41,403.92.

Kindly state in the space below whether or not this is in agreement with your records as of March 31, 1955. If not, please furnish any information you may have which will assist the auditors in locating the difference.

Your prompt attention to this request will be greatly appreciated. After signing the statement below, please mail direct to Arthur Andersen & Co., P. O. Box 185, Owensboro, Kentucky. A stamped addressed envelope is enclosed for your convenience.

Yours very truly,

LOUISIANA NATURAL GAS CORPORATION

/s/ V. W. MEYTHALER
V. W. Meythaler
Treasurer

VWM/bp
Enclosure

[fol. 47] The above balance of $41,403.92 agrees with our records at March 31, 1955, with the following exceptions (if any). Does not include $265,114.50 representing our claim for price increase of $.03503 on 7,568,213 MCF of gas sold from 9/1/53 through 3/31/55.

Date 4/27/55

Signed (Illegible)

By

LOUISIANA NATURAL GAS CORPORATION
PIONEER BUILDING
P. O. BOX 1299
LAKE CHARLES, LOUISIANA

February 2, 1955

Shell Oil Company
Box 193
New Orleans, Louisiana

Gentlemen:

Messrs. Arthur Andersen & Co., Independent Public Accountants, are now engaged in an audit of our accounts. In connection therewith, they desire to confirm the amount of our indebtedness to you at December 31, 1954, which was shown by our records as being $50,747.85.

Kindly state in the space below whether or not this is in agreement with your records as of December 31, 1954. If not, please furnish any information you may have which will assist the auditors in locating the difference.

Your prompt attention to this request will be greatly appreciated. After signing the statement below, please [fol. 48] mail direct to Arthur Andersen & Co., Railway Exchange Building, St. Louis 1, Missouri, in the enclosed envelope.

Yours very truly,

LOUISIANA NATURAL GAS CORPORATION

/s/ RICHARD C. YOUNG
Richard C. Young
Assistant Treasurer

RCY:tlb

The above balance of $50,747.85 agrees with our records at December 31, 1954, with the following exceptions (if any):

None

Signed /s/ M. D. FYFE, *Chief Accountant*

By

Date

TEXAS GAS TRANSMISSION CORPORATION
416 WEST THIRD STREET, OWENSBORO, KENTUCKY

Telephone: Owensboro 3-2431 Long Distance 206

January 23, 1956

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana

Gentlemen:

In connection with an examination of our financial statements by Messrs. Arthur Andersen & Co., independent auditors, please confirm direct to them the amount of our indebtedness to you for gas purchases as of December 31, 1955, which according to our records was $47,369.48.

[fol. 49] Kindly indicate in the space provided below whether or not the above amount is in agreement with your records and return direct to Arthur Andersen & Co., Railway Exchange Building, St. Louis, Missouri, in the enclosed self-addressed envelope.

Yours very truly,

EDW. T. BOWERS
Comptroller

ETB/bp
Enclosure

Arthur Andersen & Co.:

The above amount of $47,369.48 agrees with our records as the amount due from Texas Gas Transmission Corporation for gas purchases as of December 31, 1955, with the following exceptions, if any

— None —

By /s/ E. B. VAN SAUN

TEXAS GAS TRANSMISSION CORPORATION
416 WEST THIRD STREET, OWENSBORO, KENTUCKY

Telephone: Owensboro 3-2431 Long Distance 206

January 28, 1957

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana

Gentlemen:

Our auditors, Arthur Andersen & Co., Railway Exchange Building, St. Louis 1, Missouri, are now engaged in an [fol. 50] examination of our financial statements. In connection therewith, please confirm direct to them the amount of our indebtedness to you for gas purchases as of December 31, 1956, which according to our records was $55,889.03.

Kindly indicate in the space provided below whether or not the above amount is in agreement with your records and return direct to Arthur Andersen & Co., P. O. Box

185, Owensboro, Kentucky, in the enclosed self-addressed envelope.

Yours very truly,

/s/ Edw. T. Bowers
Edw. T. Bowers
Comptroller

ETB/hs
Enclosure

Arthur Andersen & Co.:

The above amount of $55,889.03 agrees with our records as the amount due from Texas Gas Transmission Corporation for gas purchases as of December 31, 1956, with the following exceptions, if any

— None —

Signed A. W. Green

By For E. B. Van Saun
Chief Accountant

[fol. 51]

TEXAS GAS TRANSMISSION CORPORATION
416 WEST THIRD STREET, OWENSBORO, KENTUCKY

Telephone: Owensboro Murray 3-2431 Long Distance 206

June 7, 1956

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana

Gentlemen:

Our auditors, Arthur Andersen & Co., Railway Exchange Building, St. Louis 1, Missouri, are now engaged in an examination of our financial statements. In connection therewith, please confirm direct to them the amount of our indebtedness to you for gas purchases as of April 30, 1956, which according to our records was $35,761.77.

Kindly indicate in the space provided below whether or not the above amount is in agreement with your records and return direct to Arthur Andersen & Co., P. O. Box 185, Owensboro, Kentucky, in the enclosed self-addressed envelope.

Yours very truly,

EDW. T. BOWERS
Edw. T. Bowers
Comptroller

ETB/hs
Enclosure

Arthur Andersen & Co.:

The above amount of $35,761.77 agrees with our records as the amount due from Texas Gas Transmission Cor-
[fol. 52] poration for gas purchases as of April 30, 1956, with the following exceptions, if any

—None—

Signed E. B. VAN SAUN, *Chief Accountant*
Shell Oil Company
P. O. Box 193, New Orleans 3, La.

By

Date 6/18/56

ITEM NO. A BY REFERENCE

THIS CONTRACT, made and entered into as of May 1, 1951, by and between LOUISIANA NATURAL GAS CORPORATION, a Louisiana corporation, hereinafter referred to as "Buyer", and SHELL OIL COMPANY, a Delaware corporation, hereinafter referred to as "Seller",

WITNESSETH:

WHEREAS, under date of October 1, 1943, Shell Oil Company, Inc., entered into a contract for the sale of gas to Defense Plant Corporation from its properties in the Chalkley Field of Cameron Parish, Louisiana;

WHEREAS, Louisiana Natural Gas Corporation acquired the Lake Charles Natural Gas Pipeline System from Defense Plant Corporation, and the aforesaid contract for the sale of gas from Shell Oil Company, Inc., to Defense Plant Corporation was assigned to Louisiana Natural Gas Corporation;

WHEREAS, Shell Oil Company, a Delaware corporation, has succeeded to the rights of Shell Oil Company, Inc., under the above contract, and Shell Oil Company is now selling, and Louisiana Natural Gas Corporation is now purchasing, gas produced from the properties of Seller in the Chalkley Field of Cameron Parish, Louisiana, under [fol. 53] the terms of said contract, but Buyer and Seller now desire to rescind said contract and enter into a new contract for the purchase of gas produced by Seller from its leases in the Chalkley Field of Cameron Parish, Louisiana;

WHEREAS, Seller represents that it owns or controls valid and subsisting oil and gas leases and interests in the Chalkley Field of Cameron Parish, Louisiana, which are described in Exhibit "A" attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto do covenant and agree as follows:

ARTICLE I

Sale of Gas

1. Subject to all the terms, conditions and limitations hereinafter set forth, Seller hereby sells and agrees to sell and deliver to Buyer, and Buyer purchases and agrees to purchase and receive from Seller at the hereinafter described delivery point, merchantable gas in the quantities hereinafter set forth, produced from all wells now or hereinafter drilled on Seller's lands and leaseholds as described on Exhibit "A", attached hereto, and made a part hereof, in the Chalkley Field, Cameron Parish, Louisiana.

2. Any other provision of this contract to the contrary notwithstanding, Seller hereby expressly reserves unto

Seller, and Seller's successors and assigns, the following rights together with sufficient gas to satisfy such rights:

(a) The right to deliver to lessors of any of the leases included in the lands and leasehold estates or [fol. 54] included in any of the units described in Exhibit "A" sufficient gas to meet the requirements of lessee's obligations under such leases to furnish gas to such lessors.

(b) The right to use from said lands and leasehold estates, or any one or more of said leases or units at Seller's option, all such gas as Seller may need or require for development of Seller's properties situated within the same field, including but not limited to the use of gas for fuel, drilling, developing and operating said properties, for the production of oil, gas or other minerals.

(c) The right to operate the properties covered by this contract, free from any and all control by Buyer, in such manner as the Seller, in its sole discretion, deems advisable, including, without limitation, the right to drill new wells, to repair or rework old wells, to renew or extend, in whole or in part, the lands and leasehold estates or units covered by this contract and to abandon any well or surrender, release or terminate any lease not deemed by the Seller capable under normal methods of operation of producing gas in commercial quantities.

(d) The right to use from Seller's property, or any one or more of said leases or units, at Seller's option, all such gas as Seller may need or require for fuel for processing plants or for fuel for plants manufacturing petroleum products for the Seller (provided that such processing or other plants are located in the Chalkley Field, but whether or not the processing or [fol. 55] other plants are owned by others than the Seller) or for effecting delivery of gas to the Buyer, it being recognized by the Buyer that gas so used by the Seller and gas lost through process shrinkage or gathering operations is reserved to Seller.

(e) The right to process or to have processed for it gas produced from Seller's property or any one or more of said leases or units; provided, Seller agrees that thereby the gas will not be rendered incapable of meeting the quality specifications set forth in Exhibit "B" attached hereto.

(f) The right, as between Buyer and Seller, to retain and dispose of (free from any and all claims by Buyer) all right, title or claim to any and all liquids recovered by or for the Seller from the gas.

(g) The right from time to time to alter any gas unit included in the lands described in Exhibit "A" by increasing or decreasing the surface acreage contained therein, or to pool and combine any unit or any part of any unit with other properties owned by Seller or others, or to include in any unit any interest in the lands covered by such unit not theretofore included in such unit, or to add any lease or any part thereof to any unit, or remove any lease or any part thereof from any unit, or to make any other change in any unit deemed necessary by Seller, and in the event any such change or alteration is made in any unit, this contract shall continue to apply to the interest of Seller in the existing property included in Exhibit "A" as well as extend and apply to the interest of [fol. 56] Seller in the newly-formed unit to the extent that such interest is derived from the existing property described in Exhibit "A". Likewise Seller shall have the right from time to time to pool and combine any lease described in Exhibit "A", or any part thereof, with other properties owned by Seller or others, in which event this contract shall extend and apply to the interest of Seller in the newly-formed property to the extent that such interest is derived from the existing property described in Exhibit "A". Seller shall give notice in writing to Buyer of any change contemplated by this subparagraph (g) as is deemed material to this contract, and Exhibit "A" hereof shall be considered as having been amended accordingly.

Article II

Quantity of Gas

1. Subject to the provisions hereof, Seller agrees to sell and deliver to Buyer each day a "contract quantity" of twenty million (20,000,000) cubic feet of gas and Buyer shall be obligated to purchase and receive or pay for the following minimum quantities:

(a) During the period from May 1, 1951, to December 31, 1951, inclusive, Buyer shall be obligated to purchase and receive or pay for a minimum quantity of gas equal to fifty (50) percent of the "contract quantity" of gas which Buyer could have purchased during such period.

(b) After December 31, 1951, and during the remaining period of this contract Buyer shall be obligated to [fol. 57] purchase and receive or pay for a minimum quantity of gas equal to sixty-five (65) percent of the "contract quantity" of gas which Buyer could have purchased during such period;

During either of the periods provided in (a) or (b) hereof Seller agrees to sell and deliver to Buyer up to one hundred twenty-five (125) percent of the "contract quantity" on any day or days when so requested.

2. The Buyer will attempt to take gas from the Seller as nearly as practicable on a uniform daily and hourly basis.

3. If, during any such successive period of twelve (12) calendar months from the date of first delivery of gas under

Section 1(b) of this Article II, Buyer should fail to purchase and receive the minimum quantity of gas which Buyer is then obligated to purchase and receive hereunder, Seller having such volume available for delivery, then the Seller may thereafter reduce Seller's "contract quantity" delivery obligation to the average daily quantity which Buyer purchased and received from Seller during such

period, and Seller may sell to others than Buyer on a firm and exclusive basis and free from all the terms of this contract, gas in excess of the Seller's then existing maximum obligation hereunder. If under the foregoing circumstances the Seller shall reduce its "contract quantity" delivery obligation, the maximum and minimum quantities are to be reduced to one hundred twenty-five (125) percent and sixty-five (65) percent, respectively, of such reduced "contract quantity".

[fol. 58] Should the wells on the lands and leasehold estates described in Exhibit "A" be incapable, under normal methods of operation, of producing during any such twelve (12) month period the maximum quantity of gas which Seller is obligated to deliver hereunder, then the maximum amount of gas which the Seller is obligated to deliver may upon sixty (60) days notice to Seller by Buyer or to Buyer by Seller be reduced to the quantity of gas which such wells are capable of producing under normal methods of operation. If under the foregoing circumstances the maximum amount of gas which the Seller is obligated to deliver is reduced, the "contract quantity" shall be reduced to eighty (80) percent of such reduced maximum quantity, and the minimum quantity of gas which Buyer is obligated to purchase shall be sixty-five (65) percent of such reduced "contract quantity".

4. If during any twelve (12) successive months after the first delivery of gas under Section 1(b) of Article II, Buyer shall not purchase from Seller the maximum quantity of gas which may be produced from the reserves subject to this contract under normal methods of operation consistent with all applicable state conservation and proration laws and regulations and if the estimate of gas reserves, subject to this contract, as agreed upon by Buyer and Seller, or otherwise established by arbitration as provided in Article VIII hereof, shall be greater than one and one-half times the "contract quantity" of gas which Buyer may purchase under Section 1(b) of Article II during the remaining life of the initial term of the contract, Seller may (i) sell to others than Buyer all gas produced and not purchased by Buyer in excess of an amount required to

maintain the reserves subject to this contract during the remaining life of the initial term of the contract at not [fol. 59] less than the percentage set forth above and (ii) reduce the reserves subject to this contract to such percentage.

5. Buyer and Seller agree that a determination of the economically recoverable reserves, available for delivery under this contract, shall be made not later than October 1, 1951. Either Buyer or Seller may request not more often than once each calendar year that a redetermination of such reserves be made. If Buyer and Seller do not agree upon the quantity of such reserves then the matter shall be submitted to arbitration as provided in Article VIII. If at any time such reserves, as agreed upon or determined by arbitration, are less than the "contract quantity" of gas which Buyer may purchase under Section 1(b) of Article II during the remaining life of the initial term of the contract, then Buyer may reduce the "contract quantity" hereunder over the remaining life of the initial term of the contract to an amount which would deplete such reserves by the end of such initial period, the maximum and minimum quantities to be correspondingly reduced to one hundred twenty-five (125) percent and sixty-five (65) percent of such reduced "contract quantity".

6. Buyer shall pay Seller for all gas which it is obligated under the terms of this contract to purchase from Seller, Seller having such gas available for delivery to Buyer, or such portion of such gas as Buyer is obligated to purchase which Seller does have available for delivery, even though such gas shall not actually be taken by the Buyer. The right of Seller to payments under this Section 6 shall be in addition to all other rights and remedies which Seller may have under the circumstances.

[fol. 60] 7. For the purpose of reserve evaluation as provided in Section 5 of this Article II Seller agrees to furnish Buyer upon request all well logs, flow and pressure tests, casing programs, gas analyses and other pertinent information respecting gas reserves, gas quality and well

deliverability of the lands and leasehold estates subject to this contract. Seller agrees to furnish Buyer not more often than once each calendar year, any and all potential test and pressure data available to Seller.

Article III

Pressure Decline

1. The gas to be delivered hereunder shall be delivered by the Seller into the Buyer's pipeline at the pressure which Buyer shall from time to time specify which shall not be a pressure in excess of one thousand (1000) pounds per square inch gauge. If the natural pressure of any of Seller's wells shall become insufficient to deliver the gas into the Buyer's pipeline at the pressure which Buyer shall from time to time specify, either Seller or Buyer shall have the right, but shall be under no obligation, at its own expense to compress such gas to the pressure specified from time to time. In the event that neither elects to compress such gas, the gas not so compressed shall be released from the dedication under this contract within thirty (30) days notice from either party.

2. In the event the natural pressure of Seller's wells decline to a point at which the amount of gas which can be delivered at the pressure required by Buyer shall not be sufficient to render the maintenance and operation of Buyer's line serving these wells profitable, Buyer shall so notify Seller and unless within sixty (60) days after re- [fol. 61] ceipt of such notice Seller makes arrangements to compress sufficient gas at the pressure required by Buyer hereunder to render the maintenance and operation of Buyer's lines profitable, Buyer shall have the right to terminate this contract.

Article IV

Term of Contract

Subject to the other provisions hereof, this contract shall continue in full force and effect from this date until twenty (20) years after December 31, 1951, and from year to year

thereafter unless thereupon or until thereafter at the end of any such year canceled by either party giving the other party at least ninety (90) days advance written notice of cancellation.

Article V

Point of Delivery

The point of delivery shall be at a point within the field as mutually agreed upon by Buyer and Seller.

Article VI

Prices

1. The prices to be paid by Buyer for gas hereunder shall be as follows:

For all gas purchased from May 1, 1951, until January 1, 1952	7.64745¢ per 1000 cu. ft.
For all gas purchased from January 1, 1952, through December 31, 1956	8.9970¢ per 1000 cu. ft.
[fol. 62]	
For all gas purchased from January 1, 1957, through December 31, 1961	9.8967¢ per 1000 cu. ft.
For all gas purchased from January 1, 1962 through December 31, 1966	10.7964¢ per 1000 cu. ft.
For all gas purchased from January 1, 1967, through December 31, 1971	11.6961¢ per 1000 cu. ft.

2. Buyer agrees to pay in full the present gathering tax and any renewal or extension thereof, or any similar tax which may be levied upon such gas, up to and including the sum of one (1) cent per one thousand (1000) cubic feet at the pressure base at which such tax is now being computed. Any sales, transactions, occupation, service, production, severance, gathering, transmission, export or exercise tax assessment or fee hereafter levied, assessed

or fixed by the United States or any state or other governmental authority and taxes of a similar nature or equivalent in effect (not including income, excess profits, capital stock, franchise, or general property taxes) in addition to or greater than these being levied, assessed or fixed at the date of this contract in respect of or applicable to the gas to be sold by Seller to Buyer hereunder and which Seller may be liable for during any month, either directly or indirectly through any obligation to reimburse others, are hereinafter collectively referred to as an "additional tax". It is expressly understood and agreed between the parties that Buyer shall pay to Seller each month, so long as an "additional tax" shall be in effect and shall not exceed five (5) cents per one thousand (1000) cubic feet, an amount sufficient to reimburse Seller for seven-eighths (7/8) of such additional tax. In the event all or any part of such liability [fol. 63] of Seller is not determined or not determinable by the end of any month, then such additional amount per one thousand (1000) cubic feet required in respect to such liability not determined or determinable shall be set forth for all such months in any calendar year in a statement to be rendered by Seller to Buyer by April 1st of the following year and Buyer shall pay the amount due pursuant to such statement on or before May 1st of such following year. In the event that the "additional tax" shall exceed five (5) cents per one thousand (1000) cubic feet, Buyer shall pay to Seller each month, so long as the "additional tax" shall be in effect, an amount sufficient to reimburse Seller for seven-eighths (7/8) of such "additional tax" up to four and three-eighths (4.375) cents per one thousand (1000) cubic feet, and buyer and/or Seller may pay the excess over five (5) cents per one thousand (1000) cubic feet without obligation on the part of the other party to reimburse for any part thereof, and in the event that neither Buyer nor Seller agrees to pay such excess, this contract shall terminate three (3) months from the date such "additional tax" shall exceed five (5) cents per one thousand (1000) cubic feet.

3. If at any time after December 31, 1951, Buyer shall enter into a contract providing for the purchase by it of

gas produced from a field or fields located, and delivered to Buyer, within a radius of fifty (50) miles of any point of delivery provided hereunder, Buyer shall forthwith notify Seller of such fact, and if the price per one thousand (1000) cubic feet at any time payable under such other contract is higher than the price payable hereunder, each price payable hereunder which is less than the price payable at the same time under such other contract shall be immedi- [fol. 64] ately increased so that it will equal the price payable under such other contract. In determining whether the price payable under such other contract is "higher" than the price payable for gas under this contract, due consideration shall be given to the provisions of this contract as compared with such other contract as to quality of gas, delivery pressures, gathering and compressing arrangements, quantity, provisions regarding measurement of gas, including deviation from Boyle's Law, taxes payable on or in respect of gas delivered and all other pertinent factors.

4. Seller may request a price redetermination for the periods commencing January 1, 1962, and January 1, 1967, by written notice to Buyer given not less than six (6) months nor more than twelve (12) months prior to the beginning of the period for which redetermination is desired. Such determination is to be made by the parties or, if they are unable to agree, by the arbitrators, to be made and concluded not less than three (3) months prior to the beginning of such period. Upon such request, the parties, or the arbitrators, shall determine the three (3) highest prices to be paid during such period by operating interstate transporters of natural gas, including the Buyer, for gas purchased from fields in Cameron, Calcasieu, Jefferson Davis, Acadia, and Vermilion Parishes, Louisiana, under contracts with producers, under which deliveries of gas are being made at the time of agreement or arbitration, providing for deliveries of gas over a similar period of time and upon substantially the same terms of measurement, quality and delivery provided herein, and the prices to be paid during such period shall be the average of such three (3) highest prices per MCF; provided, that in no event shall the price per MCF hereunder be less, during the respective periods, than the price shown above for such period as those

[fol. 80]

ITEM NO. C BY REFERENCE

Received Nov 18 1954
Federal Power Commission

SHELL OIL COMPANY

Remit to

Box 193, New Orleans 3, La.

In Remitting Refer to

Date Invoice No.

To:

Louisiana Natural Gas Corp.
P. O. Box 1299
Pioneer Building
Lake Charles, Louisiana

We Charge Your Account As Follows:

For gas purchased during May, 1954, from leases in our Chalkley, Louisiana field:

Volume			
State Standard	Contract	Contract Price	
298,861	298,861	*.125	$37,357.62

* We claim the contract price is 12.5¢ per MCF (effective from September 1, 1953), but we have received only 8.997¢ per MCF. This matter is now under negotiation with purchaser.

[fol. 81]

ITEM NO. D BY REFERENCE

Received Nov 18 1954
Date May 31, 1954

LOUISIANA NATURAL GAS CORPORATION
P. O. BOX 1299
PIONEER BUILDING
LAKE CHARLES, LOUISIANA

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana

We credit your account as follows:

For gas purchased from Chalkley Field, Cameron Parish, Louisiana, during May, 1954.

Meter No. 4404 298,861 M.C.F.

298,861 M.C.F. (15.025 psi) @ .089970 per M.C.F.

$ 26,888.52

ITEM E BY REFERENCE

GAS PURCHASE CONTRACT

THIS CONTRACT made and entered into as of this 1st day of September, 1943, by and between DEFENSE PLANT CORPORATION, a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, hereinafter sometimes referred to as "BUYER," and THE ATLANTIC REFINING COMPANY, a Pennsylvania corporation, hereinafter sometimes referred to as "SELLER",

[fol. 82] WITNESSETH:

WHEREAS, Seller represents that it owns a full or part interest in certain wells producing gas in the North Tepetate Pool, Acadia Parish, Louisiana, and is also the owner of a full or part interest in valid oil and gas leases affecting lands in said Pool, and

WHEREAS, Buyer represents that it is constructing a gas transmission pipe line system which will extend to a point at or near the North Tepetate Pool, for the purpose of transporting gas to plants which have been or are being constructed in the vicinity of Lake Charles, Louisiana; the pipe line system to consist of a main line of varying diameters starting from a point near such plants with lateral or take-off lines extending to points of delivery, and Buyer proposes that said gas transmission pipe line system will be completed to such extent that it will be able to accept gas hereunder not later than April 1, 1944.

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar ($1.00) cash in hand paid to the Seller by the Buyer, the receipt for which is acknowledged, and in consideration of the mutual covenants and conditions hereinafter set forth, the Seller and the Buyer do hereby covenant and agree with each other as follows:

I.

The Seller agrees to sell and deliver to Buyer and Buyer agrees to buy and receive delivery of gas hereunder at an appropriate central point, selected by Seller and Buyer, in the North Tepetate Pool and located at or near the wells where gas is produced by Seller; and Seller agrees to reserve, for Buyer's requirements hereunder, its entire gas supply from the wells in the Pool herein mentioned, subject, however, to the following reservations and conditions:

[fol. 83] (a) Seller shall have the right to use gas for its own drilling and producing operations, including gas for fuel, gas lift, drilling, pumping, repressuring, cycling, recycling, and other normal or incidental operations either in the fields from which such gas is produced or other fields in which operations are conducted by Seller; but Seller's use of such gas shall be limited to an average of fifteen million (15,000,000) cubic feet per day during each calendar month. Seller shall at all times have the right to cycle produced gas to an underground reservoir in the same field so long as cycling operations, together with other uses of gas in Seller's operations, do not constitute a net

withdrawal of more than an average of fifteen million (15,000,000) cubic feet of gas per day during each calendar month.

(b) While Seller shall use all reasonable efforts to supply gas hereunder in sufficient quantities to meet Buyer's requirements, Seller will not be liable to Buyer for failure to so furnish gas except for failure to make reasonable efforts to maintain gas production from wells drilled by Seller and producing gas in said fields. Should Seller drill any new well or wells under its leases, and produce gas therefrom, such wells and the gas produced therefrom shall be subject to all the provisions of this contract. Seller shall not be required to produce gas from any wells in quantities sufficient to damage the well from which such production is obtained.

(c) Unless Buyer shall complete the construction of the gas transmission pipe line referred to above, to such extent that Buyer shall be able to accept delivery of gas hereunder, and shall commence the purchase of gas hereunder, not later than April 1, 1944, this agreement shall terminate and be of no further force and effect whatsoever; provided, that if Buyer shall be prevented from completing the construction of said line by April 1, 1944 by force majeure, [fol. 84] as defined in Condition XI hereof, then the conditional termination date shall be extended to June 1, 1944, so that unless Buyer so completes said line to such extent that Buyer commences the purchase of gas hereunder by June 1, 1944, this agreement shall wholly terminate, anything elsewhere herein contained to the contrary notwithstanding. In no event shall Buyer be liable to Seller in damages for failure to complete said line and commence the purchase of gas hereunder.

II.

Subject to the provisions of Condition I above, the Seller shall furnish and the Buyer shall accept delivery hereunder of gas in the following quantities and minimum amounts:

(a) Seller shall be obligated to furnish to Buyer hereunder approximately twenty per cent (20%) of Buyer's

total pipe line requirements which are presently estimated to be one hundred twenty-seven million (127,000,000) cubic feet per day, so long as Seller's wells in the North Tepetate Pool can produce that much gas during each calendar month's period. Buyer shall be obligated to take from Seller approximately twenty per cent (20%) of Buyer's total pipe line requirements, but not to exceed an average of twenty-five million (25,000,000) cubic feet per day during each calendar month's period, and only so long as Seller's wells in the North Tepetate Pool can produce that much gas during each calendar month's period. If, during any calendar month's period after the time gas is first delivered to Buyer hereunder, Seller should fail to make available to Buyer an average of twenty per cent (20%) of Buyer's total pipe line requirements, unless such failure is due to force majeure as defined in Condition XI, at any [fol. 85] time or times thereafter Buyer may secure the balance of its requirements under this contract from other parties; and once such default has occurred, Buyer may continue indefinitely to secure the balance of its requirements under this contract from other parties even though Seller's wells would have been capable of furnishing twenty per cent (20%) of Buyer's requirements.

Should Buyer continue so to secure the balance of its requirements elsewhere for more than three months after Seller shall have notified Buyer that Seller's wells are again capable of furnishing twenty per cent (20%) of Buyer's requirements, then thereafter Seller shall not be obligated to reserve such balance for Buyer, and may otherwise dispose of it, subject to Buyer's right to have first call on such balance of gas if necessary to enable Seller to continue to make delivery of the amount of gas Seller shall then be obligated to deliver to Buyer under this contract.

(b) If, during any twelve months' period after the time gas is first delivered to Buyer hereunder, the total amount of gas purchased by Buyer should average less than five million (5,000,000) cubic feet per day (and if, during said period, Seller's wells would have been capable of furnishing such minimum), either party shall have the right to

terminate this contract by giving the other party ninety (90) days' notice, in writing, of its desire so to do.

(c) If, during and over any three months' period, Seller should fail to make available to Buyer an average of as much as five million (5,000,000) cubic feet per day, Buyer shall have the option and right to cancel this contract by giving ninety (90) days' notice, in writing, of Buyer's desire so to do.

[fol. 86] (d) In the event of the cancellation of this contract by the written notice referred to in paragraph (b) or that mentioned in paragraph (c) above, this contract shall terminate at the end of ninety (90) days after the receipt of such notice except for necessary settlements between Seller and Buyer for gas delivered hereunder prior to said termination date, and except for any liability which may have arisen hereunder prior to such termination.

(e) If Buyer should purchase gas from any wells in the North Tepetate Pool other than wells covered by this agreement, Buyer agrees to purchase from such other wells not more than that proportionate part of Buyer's total takings from the North Tepetate Pool which the total gas allowable of such other wells bears to the total gas allowable of all producible wells in said Pool from which Buyer is then purchasing gas. If no gas allowable has been established for the North Tepetate Pool, then the foregoing ratio shall be based upon the gas producing capacity of said wells, as determined by the Department of Conservation of the State of Louisiana.

III.

The Buyer agrees to pay for the gas received hereunder a price computed as follows:

(a) For the first five years from the date of this contract, two and two-tenths cents (2.2c) net per one thousand (1,000) cubic feet of gas received at the central point or points herein provided for into Buyer's pipe line system, and in addition Buyer shall reimburse Seller for all state severance taxes, or similar taxes, which Seller is obligated to pay and has paid to the State of Louisiana for such gas.

[fol. 87] During the first five-year period, should any portion of the gas transported by Buyer through its main pipe line, as herein referred to, be sold directly or indirectly to any person, firm or corporation for use other than in a Government owned plant, or to other than a Governmental Agency, or Government owned plant or corporation, or should any portion thereof be used by any future owner of said line other than a Governmental Agency or Government owned plant or corporation, Seller shall receive for its proportionate part of such gas sold or used one-half cent (½c) per thousand cubic feet in addition to the net price of two and and two-tenths cents (2.2c) per thousand cubic feet hereinabove fixed (making a total net price of two and seven-tenths cents (2.7c) per thousand cubic feet); such increase to be based on the same percentage of the gas delivered by Seller to Buyer hereunder that the percentage of gas so sold to or used by private parties bears to the total amount of gas purchased from Seller and others and delivered through Buyer's transmission system during any one month's period, with proper allowance being made for losses in transit through Buyer's transmission line.

(b) At the end of the first five-year period, Buyer and Seller are to reach an agreement as to the price for gas sold and delivered under this contract during the second five-year period. The price to be paid during such second five-year period is to be agreed upon at the beginning of such period after a survey of prevailing prices for gas being sold in similar quantities in the southwestern part of Louisiana.

(c) During succeeding five-year periods, prices to be paid will be determined at the beginning of each period in the same manner as provided for in paragraph (b) above.

(d) In the event that the parties are unable to agree upon the price to be paid for gas after the first five-year [fol. 88] period, in accordance with the arrangements set forth in paragraphs (b) and (c) above, such determination shall be submitted to arbitration in accordance with Condition XII.

IV.

For the purpose of measurement and billing under this contract, a standard of 1,000 cubic feet of gas shall be considered as the quantity of gas which occupies 1,000 cubic feet of space at a temperature of 60° Fahrenheit and at a pressure of 8 ounces above an assumed atmospheric pressure of 14.7 pounds per square inch. In computing the gas volumes correction shall be made for the flowing temperature and specific gravity of the gas and computations shall be made in accordance with the formulae and tables contained in the A.G.A. Report No. 2, except that no corrections shall be made for Reynolds number and expansion factor unless their combined effect shall amount to a correction of more than one per cent (1%).

Gas shall be delivered hereunder at natural flowing pressure of Seller's wells, and at pressures required by Buyer from time to time but not in excess of seven hundred fifty (750) pounds per square inch, and the minimum requirements as stated in Condition II hereof shall mean at these pressures.

V.

Buyer shall install, operate and maintain in accurate repair, at its own expense, at the various points of delivery, meters of ample capacity and type for accurate measurement of the gas supplied by Seller hereunder. Meters, meter readings and meter charts shall be accessible for inspection by Seller and Seller's agents and employees. Meters shall be calibrated at least once each thirty days at Buyer's expense. If, upon any test, the percentage of inaccuracy [fol. 89] shall be two per cent (2%) or more, registrations thereof shall be corrected at the rate of such inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, then for a period extending back one-half of the time elapsed since the last calibration date. Following any test, metering equipment found inaccurate shall immediately be corrected or replaced by Buyer. If for any reason any meter is out of service or out of repair so that the amount of gas delivered can not be ascertained or computed from the reading thereof, gas delivered through the period such

meter was out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of Seller's check meter, if installed and accurately registering;

(b) By correcting the error, if the percentage of error is ascertainable by calibration, test or mathematical calculation;

(c) By estimating the quantity of the delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

Seller may, at its option and expense, install and operate check meters to check Buyer's meters, but measurement of gas for the purpose of this agreement shall be by Buyer's meters only, except in cases hereinabove specifically provided to the contrary. Check meters shall be of orifice type and shall be subject at all reasonable times to inspection or examination by Buyer, but the reading, calibration and [fol. 90] adjustment thereof and changing of charts shall be done only by Seller.

Either party shall have the right to be present at all calibrations or adjustments of the other party's meter.

VI.

Buyer shall install and maintain in repair recording thermometers at all meter installations and make proper temperature corrections in the gas volume computations, the average of the twenty-four (24) hour recording, or so much of the twenty-four (24) hours as gas has been passing, being deemed the temperature for that day. The specific gravity of the gas delivered shall be measured by an approved method at least every three months by joint tests on or as near the first of each three months' period as practicable and the results obtained shall be used in the gas volume computations until a new determination is made. The method of test shall be agreed upon by Buyer

and Seller. Such test shall determine the specific gravity to be used in computations for the measurement of natural gas delivered during such three months' period.

VII.

It is the intention of the parties that the gas to be delivered under this contract shall be gas which is produced in its natural state from Seller's wells. It is agreed that Seller shall install separators and/or drips at or near the mouth of its well or wells for the purpose of separating from the gas produced from said well or wells, any crude oil, casinghead gasoline, condensate, or other liquid crude petroleum which may be produced with the gas from the well or wells covered hereunder, or which may result from retrograde condensation or any other operation conducted [fol. 91] hereunder by Seller in producing the gas deliverable to Buyer. It is further agreed that Seller may operate said separators or drips in any manner which, in the sole opinion of Seller, Seller may deem necessary to its business of separating, recovering, or extracting such crude oil, condensate, or other liquid crude petroleum, so long as such operation does not interfere with the fulfillment by Seller of its agreements hereunder. All such crude oil, condensate, or other liquid crude petroleum separated, recovered, or extracted in said separators or drips installed by Seller, shall remain the property of Seller and Seller reserves the right to dispose of such crude oil, condensate, or other liquid crude petroleum in any manner it may choose.

It is understood and agreed, however, that Seller may extract, or cause to be extracted, the natural gasoline, butane, and other hydrocarbons from said gas before delivery to Buyer and Seller reserves the right, without the obligation, to construct a natural gasoline extraction plant for the purpose of extracting the natural gasoline, butane, and other hydrocarbons from gas to be delivered hereunder before delivering said gas to Buyer.

Buyer shall be obligated to accept and purchase only natural gas which is of merchantable quality, and which contains not more than twenty (20) grains of sulphur and twenty (20) grains of hydrogen sulphide per one thousand

(1,000) cubic feet, and which contains not more than one per cent (1%) by volume of free oxygen, and which has a heating content of not less than nine hundred fifty (950) British Thermal Units per cubic foot.

VIII.

Buyer shall render to Seller, on or before the 10th day of each month, a statement of the amount of gas delivered by Seller during the preceding calendar month and shall [fol. 92] accompany each statement with supporting charts, which charts shall be returned to Buyer after examination. Buyer shall make payment on or before the 25th day of each month for all gas delivered hereunder during the preceding calendar month. If failure to pay should continue for sixty (60) days, Seller may, upon ten (10) days' advance notice in writing to Buyer, suspend deliveries of gas hereunder, provided, however, Buyer shall not be considered to be in default hereunder if, in case of a bona fide dispute with respect to any portion of its bill, payment of the portion thereof not in dispute is made.

IX.

The Buyer shall use reasonable efforts to keep the Seller informed at all times in regard to current and anticipated demands for gas hereunder. The Seller hereby warrants the title to all gas delivered hereunder and its right to sell such gas, and that such gas is free and clear of all liens and adverse claims. The Seller further assumes the responsibility and liability of making payments to the lessors and royalty owners of proportionate amounts due them on the gas sold to the Buyer. Should Seller lose the right to deliver gas from any of its present leases by litigation or any other procedure except a voluntary relinquishment, Seller would not thereafter be liable for failure to deliver gas from such leases.

X.

The rights of the parties hereunder shall continue in force and effect for the gas producing life of the North

Tepetate Pool but in any event not to exceed twenty-five (25) years, unless sooner terminated by mutual consent or pursuant to the specific rights of termination herein elsewhere set forth.

[fol. 93]

XI.

In the event either party hereto is rendered unable, wholly or in part, by force majeure to carry out its obligations hereunder, other than its obligation to make payments of amounts due hereunder, it is agreed that upon such party giving notice and full particulars of such force majeure in writing or by telegram to the other party or parties affected as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected, shall be suspended during the continuance of such cause, but for no longer period; and such cause, so far as possible, shall be remedied with all reasonable dispatch.

The term "force majeure," as employed herein, shall mean acts of God, acts of a public enemy, injunction, strike, riot, invasion, fire, breakage of or accident to machinery or lines of pipe, inability to obtain, or unavoidable delay in obtaining, material and equipment, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming the suspension and which, by the exercise of due diligence, such party could not have avoided or overcome.

XII.

In case the parties hereto shall be unable to agree on any question or dispute arising under this contract, such question or dispute shall be referred for settlement to three arbitrators, one appointed by Seller, one appointed by Buyer, and the third appointed by the two others so chosen. The party desiring such arbitration shall notify the other and in such notice shall name an arbitrator, the arbitrator to be appointed by the other party shall be named within ten (10) days after receipt of such notice [fol. 94] of arbitration, and an additional arbitrator shall, within ten (10) days of the appointment of the second ar-

bitrator, be selected by the two (2) arbitrators theretofore appointed, but if one of said parties shall have failed to appoint an arbitrator within the time provided herein it is expressly understood and agreed that the two arbitrators shall arbitrate the question alone. If arbitrators shall have been appointed by the respective parties and shall have failed to select the third arbitrator within the above stated time, the third arbitrator shall be appointed by the senior Judge of the 5th Federal Judicial Circuit upon application therefor by either of said parties to the arbitration.

The matter in question or dispute shall be submitted in writing to the arbitrators immediately upon the completion of their appointment, and the parties shall do all things necessary to make proper submission thereof according to the character of the question or dispute involved, or as required by the arbitrators. The decision in writing signed by a majority of the arbitrators shall be final and conclusive with respect to the matter submitted and the parties hereto agree to accept and abide by the same. The cost of any arbitration hereunder shall be paid equally by all the parties, except that the compensation, if any, of the first and second members appointed to the board of arbitration shall be paid by the party by or for whom they are named.

XIII.

This contract may be assigned or transferred by Buyer, in whole or in part, to any assignee or transferee, without recourse. It is expressly understood that Seller shall not have the right to assign or transfer this contract without Buyer's consent, except to a subsidiary or an affiliate; and [fol. 95] Seller agrees that it will not assign this contract to any assignee, unless Seller shall also simultaneously assign or transfer its interest in wells producing gas in the North Tepetate Pool and its interests in oil and gas leases affecting lands in said Pool to Seller's assignee of this contract, and, likewise, this covenant to assign or transfer such interests in wells and leases simultaneously with this contract shall extend to any subsequent assignments by Seller's assigns of Seller's interest in the contract.

Subject to the provisions of the preceding paragraph, it is expressly understood and agreed that all the covenants,

stipulations, terms and conditions of this contract shall extend to and be biding upon the respective parties hereto, and their respective successors and assigns.

This contract shall apply to the entire gas production of all wells and leases in the North Tepetate Pool in which Seller now or hereafter has a full or part interest.

XIV.

This contract shall be subject to all applicable Federal, state, municipal and local laws, and to the rules, orders, regulations or requirements of any duly constituted Federal, state or other governmental agency or department having jurisdiction in the premises.

XV.

No member of or Delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit arising therefrom.

XVI.

Seller agrees to make available to Buyer for audit and inspection from time to time, its books and records per- [fol. 96] taining to severance taxes, or similar taxes, and matters in connection therewith. In the event that the increase in the net price of gas provided for in Condition III(a) becomes operative, Buyer agrees to make available to Seller for audit and inspection any records necessary for the computation of the increased net price.

XVII.

All notices and communications hereunder from either party to the other shall be in writing, and unless otherwise specified any such notices may be given by registered mail or delivery at the offices of the parties as follows:

Seller—The Atlantic Refining Company,
P. O. Box 2819,
Magnolia Building,
Dallas, Texas;

[fol. 65] prices may be subsequently adjusted in accordance with Section 3 of this Article VI.

5. Seller shall have the right but not the obligation to dehydrate the gas deliverable hereunder to Buyer's specification. Seller shall notify Buyer on or before May 1, 1951, whether or not Seller will so dehydrate such gas. In event Seller elects to dehydrate such gas, Buyer shall pay, in addition to the prices provided in Article VI, two hundred twenty-five thousandths (0.225) of one (1) cent per one thousand (1000) cubic feet of gas delivered hereunder.

Article VII

Warranty of Title to Gas

1. Seller hereby warrants title to the gas sold hereunder and the right of Seller to sell the same and the Seller warrants that all such gas is free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes and other taxes. Seller shall at all times have the obligation to make settlements for all royalties due and payments to the mineral and royalty owners under the Seller's leases as modified by such unitization agreements and other documents as may appear of record or otherwise be binding upon Seller, and in accordance with the terms of the respective leases, and to make settlements with all other persons having any interest in the gas sold hereunder, and Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes (other than taxes levied pursuant to statute against or payable by the Buyer), license fees or charges thereon which are applicable before the title to [fol. 66] the gas passed to Buyer or which may be levied and assessed upon the sale thereof to Buyer. In the event any adverse claim of any character whatsoever is asserted in respect to any of said gas, Buyer may retain, as security for the performance of Seller's obligations with respect to such claim under this section, out of monies then or thereafter payable to the Seller under this contract up

to the amount of such claim without interest until such claim has been finally determined or until Seller shall have furnished bond to Buyer in an amount and with sureties satisfactory to Buyer, conditioned for the protection of buyer with respect to such claim.

Article VIII

Arbitration

In case the parties hereto shall be unable to agree on any question or dispute arising under this contract, such question or dispute shall be referred for settlement to three arbitrators, one appointed by Seller, one appointed by Buyer, and the third appointed by the two others so chosen. The party desiring such arbitration shall notify the other and in such notice shall name an arbitrator, the arbitrator to be appointed by the other party shall be named within ten (10) days after receipt of such notice of arbitration, and an additional arbitrator shall, within ten (10) days of the appointment of the second arbitrator, be selected by the (2) arbitrators heretofore appointed, but if one of said parties shall have failed to appoint an arbitrator within the time provided herein, it is expressly understood and agreed that the sole arbitrator shall arbitrate the question alone. If arbitrators shall have been appointed by the respective parties and shall have failed to select the third arbitrator within the above stated time, the third arbitrator shall be appointed by the Senior Judge of the [fol. 67] 5th Federal Judicial Circuit upon application therefor by either of said parties to the arbitration.

The matter in question or dispute shall be submitted in writing to the arbitrators immediately upon the completion of their appointment, and the parties shall do all things necessary to make proper submission thereof according to the character of the question or dispute involved, or as required by the arbitrators. If the matter to be arbitrated is an accounting question the arbitrators shall be Accountants; if it is an engineering question the arbitrators shall be Engineers, etc., it being the intention of the parties that only personnel qualified as specialists in their field of work shall be used. The decision in writing signed by a

majority of the arbitrators shall be final and conclusive with respect to the matter submitted and the parties hereto agree to accept and abide by the same. The cost of any arbitration hereunder will be paid equally by all parties, except that the compensation, if any, of the first and second members appointed to the board of arbitration shall be paid by the party by or for whom they are named.

Article IX

Miscellaneous

1. (a) No waiver by either party of any one or more defaults by the other party in the performance of this contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

(b) Any notice, request, demand, statement or bill provided for in this contract shall be in writing and shall [fol. 68] be directed to the post office address of each of the parties hereto, as the case may be as follows:

Buyer: Louisiana Natural Gas Corporation
P. O. Box 1840
Shreveport, Louisiana

Seller: Shell Oil Company
Richards Building
New Orleans, Louisiana

or at such other address as either party shall from time to time designate for the purpose by a registered letter addressed to the other party.

2. This contract shall not be assigned, in whole or in part by the Buyer without, in each instance, the prior written permission of the Seller; except that the Buyer may, without first obtaining such written consent of the Seller, pledge or mortgage its interests in this contract, or assign the same as security for any loan to it, and Louisiana Natural may assign its interests in this contract at any time to Texas Gas Transmission Corporation.

All the Terms, covenants and agreements hereof shall run in favor of and be binding upon the parties hereto, their personal representatives, successors and assigns.

3. This contract may be executed in a number of counterparts, each of which shall be considered an original.

4. There is attached hereto Exhibit "B" which is hereby made a part of this contract and contains certain provisions entitled as follows:

I. Quality of Gas
II. Measurements
III. Billing and Payment
IV. Regulatory Bodies
V. Force Majeure

[fol. 69] In Witness Whereof, this instrument is executed as of the date first above written.

Louisiana Natural Gas Corporation

By B. C. Adams, Jr.
Vice President. (Buyer)

Attest:
R. C. Kester
Asst. Secretary (Buyer)

Witnesses:

Ann H. Neighbors
Mary B. Appleton

Shell Oil Company

By [Illegible]
Attorney-in-Fact (Seller)

Attest:

.....

Witnesses:

E. L. Clouts
F. K. Rader

[Exhibits A & B omitted]

[fol. 70]

ITEM NO. B BY REFERENCE

Received Feb 11 10:17 AM '57
Federal Power Commission

SHELL OIL COMPANY
50 WEST 50TH STREET
NEW YORK 20, N. Y.

February 7, 1957

FPC Gas Rate
Schedule No. 153
Supplement No. 1
Filing Date: 2-11-57

Effective Date: 8-22-57
Rates Effective
Subject to Refund

Secretary, Federal Power Commission
441 G Street Northwest
Washington 25, D. C.

Supplement No. 1 to Shell Oil Company Gas Rate Schedule—Chalkley Field, Cameron Parish, Louisiana

Dear Sir:

On November 18, 1954 Shell Oil Company filed the subject rate schedule (identified as Gas Rate Schedule No. 49 in attachment to letter dated September 30, 1954) covering sales of gas to Texas Gas Transmission Company.

Pursuant to section 154.94 of the Commission's Regulations under the Natural Gas Act, Shell files this change in rate for gas sold pursuant to the above rate schedule to increase the price, effective from date of filing hereof, but in no event later than March 11, 1957, from 12.5¢ per Mcf to 16.75¢ per Mcf, both rates exclusive of reimbursement for Louisiana gathering tax.

[fol. 71] This change in rate results from a price increase clause in the above rate schedule (Article VI, Par. 3, Pages 13 and 14), and the fact that on July 12, 1956 the purchaser in the above rate schedule (Texas Gas) entered into a contract with Gulf Refining Company providing for the pur-

chase by Texas Gas of gas within the 50-mile radius specified in the above rate schedule, at an initial price of 17¢ per Mcf. We understand that deliveries under the Gulf-Texas Gas Contract started on or about January 1, 1957.

Attached is a copy of letter from Texas Gas to us dated November 28, 1956 wherein we are notified of the foregoing purchase by Texas Gas from Gulf and of its application to our above gas sale. The contract between Gulf and Texas Gas is of record with the Commission in Docket No. G-10946, and said contract is incorporated herein by reference.

The date on which this filing is to be effective is February 8, 1957.

We request that the effective date of this change in rate be the date of filing, but in no event later than March 11 1957.

Attached is a 24-month comparative statement of sales and revenues, by months, under the effective rate of 12.5¢ per Mcf and under the proposed changed rate.

In support of this change in rate it is respectively shown:

1. This increase results from the bringing into effect of a provision in the above rate schedule (Article VI, Par. 3, Pages 13 and 14) which was agreed upon in a good faith, arm's-length transaction between the seller and the [fol. 72] buyer. The inclusion of this provision in the contract was a major inducement for Shell to enter into this long-term contract to replace a contract made some years earlier.

2. The increased price represents the current fair value of the gas committed to this long-term contract, and said increased price is in line with or lower than prices currently being paid for gas from comparable reserves in South and Southwest Louisiana.

3. The increased price is necessary as a partial offset to the increase in the cost of our gas business. In recent years the cost of exploring for gas reserves, acquiring gas leasehold rights, and drilling for and producing gas have undergone substantial increases. For example, basic wage rates alone have increased on the average of 4 to 5% annually since this contract was negotiated.

In connection with this change in rate, it is further shown:

With its letter of September 30, 1954, Shell filed with the Commission the above rate schedule which consists of a gas sales contract dated May 1, 1951 between Shell, as Seller, and Louisiana Natural Gas Corporation (now Texas Gas Transmission Company, and referred to herein as Texas Gas), as Buyer. As a part of that filing there was included a billing statement showing the price as of June 7, 1954 to be 12.5¢ per Mcf, but states that we were being paid only 8.997¢ per Mcf and that the matter was under negotiation with the purchaser.

In your letter to us of January 6, 1955 you ask that we furnish you with a statement of the basis for the 12.5¢ price.

This matter has been delayed as we have been attempting, but without success, to have Texas Gas agree with [fol. 73] us as to the legal effect of the following provision of the subject rate schedule (Article VI, Paragraph 3, pages 13 and 14), in the light of events which transpired prior to June 7, 1954:

> "If at any time after December 31, 1951, Buyer shall enter into a contract providing for the purchase by it of gas produced from a field or fields located, and delivered to Buyer, within a radius of fifty (50) miles of any point of delivery provided hereunder, Buyer shall forthwith notify Seller of such fact, and if the price per one thousand (1,000) cubic feet at any time payable under such other contract is higher than the price payable hereunder, each price payable hereunder which is less than the price payable at the same time under such other contract shall be immediately increased so that it will equal the price payable under such other contract."

On February 17, 1954, pursuant to a price negotiation provision in a contract between Texas Gas and Atlantic Refining Company dated September 1, 1943, Texas Gas and Atlantic entered into a contract pursuant to which Texas Gas paid Atlantic 12.5¢ per Mcf effective from September 1, 1953 for gas produced in the North Tepetate Field, which

field is located within the fifty-mile radius specified in our contract of May 1, 1951 with Texas Gas.

As a result of the foregoing contract between Texas Gas and Atlantic dated February 17, 1954, Shell has consistently maintained with Texas Gas that the price in our subject rate schedule automatically increased on February 17, 1954 to 12.5¢ per Mcf effective September 1, 1953 (the effective date of the price contract between Texas Gas and Atlantic). Accordingly, the June 7, 1954 price under the subject rate schedule was 12.5¢ per Mcf.

[fol. 74] Texas Gas does not agree with us that the contract which it made with Atlantic on February 17, 1954 activated the above-quoted price clause in the subject rate schedule. By virtue of this disagreement we are now preparing to file suit against Texas Gas in a court of proper jurisdiction to confirm our position that our rate as of September 1, 1953 (and, of course, our June 7, 1954 rate) is 12.5¢ per Mcf.

• • • • • • •

In the event the Commission deems it necessary to enter upon a hearing concerning this increase, it is respectfully requested that the increase not be suspended, but be permitted to go into effect as of the date of filing hereof, but in no event later than March 11, 1957, under bond and subject to refund. The reasons for this request are:

At the time this long-term contract was entered into in 1951, the Commission was not asserting jurisdiction over field sales of gas by producers. We had no reason at that time to believe that contractual price provisions would not be carried out as written, hence, little or no consideration was given by us to devising a contractual arrangement under which we would be afforded the opportunity, by an anticipatory filing, of protecting ourselves against loss of revenue which might result from a suspension of a price increase.

Shell was compelled by circumstances to commit this gas under this contract pursuant to which the new price now sought to be made effective could not be put into effect until the occurrence of a specified event which Shell could neither control nor anticipate. In view of these circumstances, we are contractually bound to a situation

where a suspension will make us suffer unnecessary and irretrievable loss of revenue in the event our increased price is later determined to be just and reasonable.

[fol. 75] The situation now existing in the natural gas industry relative to the increase of rates in existing contracts results in a disparity of treatment between producer natural-gas companies and pipe line natural-gas companies. This disparity of treatment, while legally permissible because of the different contractual arrangements under which the producers and the pipe lines normally sell their gas, is nonetheless unnecessary and results in the inequitable treatment to the producers. We submit that it would be an appropriate exercise of Commission discretion to eliminate such disparity which has been brought about by circumstances beyond the control of the Commission and the producers.

We realize, of course, that this contract was of our own making and that we are bound by its provisions. And certainly we recognize the unfettered power of the Commission to suspend this increase for a period not to exceed five months. But we submit that the public interest cannot be adversely affected and Shell can receive no more than its just entitlement by permitting this increase to go into effect, as herein requested.

If a hearing is deemed necessary and such hearing results in a finding that the increased price is not just and reasonable no one will suffer. Shell will then be obligated and able to reimburse the purchaser with interest. If, on the other hand, a hearing results in a finding that the increased price is just and reasonable we will then only receive, and the purchaser will then only be obligated to pay, a price which they agreed upon and which the law entitles the seller to receive.

It is therefore respectfully submitted that the price increase filed for herein is just and reasonable and should [fol. 76] be permitted to go into effect on the date of filing hereof, but in no event later than March 11, 1957.

In the alternative, an in the event the Commission deems it necessary to enter upon a hearing relative to this increase, it is respectfully urged that said increase not be suspended but that Shell be permitted to collect same from

and including the date of filing hereof, but in no event later than March 11, 1957, upon furnishing acceptable bond of corporate undertaking conditioned upon the refund, with interest, of so much of such increase as the Commission determines in a final order to exceed the just and reasonable price of the gas being sold under above rate schedule.

A copy of this filing is being sent to Texas Gas Transmission Company.

Yours very truly,

/s/ W. B. Golush
W. B. Golush, *Manager*
Head Office Gas Department

[fol. 77]
STATE OF NEW YORK
COUNTY OF NEW YORK

W. B. Golush, being first duly sworn, deposes and says that he is Manager, Head Office Gas Department of Shell Oil Company and that he is authorized to make the foregoing filing; and that the contents of said filing are true and correct to the best of his knowledge, information and belief.

/s/ W. B. Golush
W. B. Golush

Sworn to and subscribed before me this 7th day of February, 1957.

(SEAL) /s/ Eileen M. Pineman
Notary Public

Eileen M. Pineman
Notary Public, State of New York
No. 30-8376610
Qualified in Nassau County
Cert. filed in New York County
Commission expires Mar. 30, 1958

[fol. 78]

Received Feb 11 10:17 AM '57
Federal Power Commission

TEXAS GAS TRANSMISSION CORPORATION
638 BANK OF THE SOUTHWEST BUILDING
HOUSTON 2, TEXAS

November 28, 1956

Telephone CApitol 7-6321
Teletype HO-894

Address Reply to:
Gas Supply Department

Shell Oil Company
P. O. Box 193
New Orleans, Louisiana
Attention: Mr. E. S. Quinn

Gentlemen:

Referring to Article VI, Section 3, of our gas purchase contract dated May 1, 1951, covering certain of your properties in the Chalkley Field, Cameron Parish, Louisiana, we enclose herewith for your information a copy of a gas purchase contract dated July 12, 1956, between Gulf Refining Company and Texas Gas Transmission Corporation.

Certificates of Public Convenience and Necessity were issued by the Federal Power Commission on November 26, 1956, to Texas Gas in Docket No. G-10886 and to Gulf Refining in Docket No. G-10946.

It is anticipated that initial deliveries of gas pursuant to the terms of this contract will commence on or about January 1, 1957.

Yours very truly,

TEXAS GAS TRANSMISSION CORPORATION

WLS:bb
Enclosure

W. L. STANTON,
W. L. Stanton, *Vice President*

SHELL OIL COMPANY
COMPARATIVE STATEMENT OF GAS SALES
FOR 12 MONTHS PRECEDING AND 12 MONTHS FOLLOWING 1/1/57

SELLER: Shell Oil Company BUYER: Texas Gas Transmission Corp. FIELD: Chalkley, Cameron Parish, La.

Period	MCF (15.025 FPV)	Price "A"*	Value "A"	Price "B"*	Value "B"	Period	MCF (15.025 FPV)	Price	Value
1956						1957			
Jan.	490,755	$0.1250	$61,344.38	$0.08997	$44,153.23	Jan.	455,328**	$0.1675	$76,267.44
Feb.	521,894	"	65,236.75	"	46,954.80	Feb.	411,264**	"	68,886.72
Mar.	538,426	"	67,303.25	"	48,442.19	Mar.	455,328**	"	76,267.44
Apr.	357,725	"	44,715.63	"	32,184.52	Apr.	440,640**	"	73,807.20
May	414,397	"	51,799.63	"	37,283.30	May	455,328**	"	76,267.44
June	435,049	"	54,381.13	"	39,141.36	June	440,640**	"	73,807.20
July	396,971	"	49,621.38	"	35,715.48	July	455,328**	"	76,267.44
Aug.	506,933	"	63,366.63	"	45,608.76	Aug.	455,328**	"	76,267.44
Sept.	303,415	"	37,926.88	"	27,298.25	Sept.	440,640**	"	73,807.20
Oct.	364,702	"	45,587.75	"	32,812.24	Oct.	455,328**	"	76,267.44
Nov.	486,605	"	60,825.63	"	43,779.85	Nov.	440,640**	"	73,807.20
Dec.	559,058	"	69,882.25	"	50,298.45	Dec.	455,328**	"	76,267.44
Sub-Total	5,375,930	$0.1250	$671,991.29	$0.08997	$483,672.43		5,361,120	$0.1675	$897,987.60
Plus: Gathering tax payable by Shell and to be reimbursed to Shell by buyer.						Plus: Gathering tax payable by Shell and to be reimbursed to Shell by buyer.			
	5,375,930 MCF @.01 MCF		53,759.30		53,759.30		5,361,120 MCF @.01 MCF		53,611.20
Total			$725,750.59		$537,431.73				$951,598.80

* Shell and Texas Gas have been unable to agree on the price per MCF of gas payable after 9/1/53. Columns "A" show Shell's interpretation of contract price and consequent revenue. Columns "B" show Texas Gas' interpretation of contract price and the revenue paid by Texas Gas, which Shell collected under protest, during the 12 months preceding 1/1/57.

** Estimated.

Buyer—Defense Plant Corporation,
Washington, D. C.,

or at such other addresses as may be hereafter designated in writing by either party to the other for that purpose; and all payments to Seller hereunder shall be delivered or made to Seller, The Atlantic Refining Company, Magnolia Building, Dallas, Texas.

XVIII.

This contract shall be binding upon and inure to the benefit of the respective parties hereto and their successors and assigns.

In Witness Whereof, each of the parties hereto has caused this contract to be signed in its corporate name by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by [fol. 97] its Secretary or one of its Assistant Secretaries, all as of the day and year first above written.

Defense Plant Corporation,

BY W. E. Joyce
Vice-President

Attest:

Thomas Kelly
Assistant Secretary

Witnesses to the execution hereof by Defense Plant Corporation:

Lorraine V. Johnson
Mary Jean Ott

The Atlantic Refining Company,

BY E. H. Blum
Vice-President

ATTEST:

L. A. SIMKEL
Assistant Secretary

Witnesses to the execution hereof by The Atlantic Refining Company:

MAURINE MILLER
M. E. FORD

DISTRICT OF COLUMBIA, SS:

On this 17th day of Sept., 1943, before me appeared W. E. Joyce and Thomas Kelly, to me personally known, who being by me duly sworn did say that they are the Vice President and Assistant Secretary of DEFENSE PLANT CORPORATION, and that the seal affixed to this contract is the corporate seal of said corporation and that [fol. 98] said contract was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said W. E. Joyce and Thomas Kelly acknowledged said contract to be the free act and deed of said corporation.

WITNESS my official signature and seal at Washington, D. C., on the day, month and year first above written.

MURIEL KNOLIN
Notary Public

(SEAL)

My commission expires
January 31, 1948.

STATE OF TEXAS:
COUNTY OF DALLAS: SS:

On this 11th day of Sept., 1943, before me appeared E. H. Blum, to me personally known, who being by me duly sworn did say that he is Vice-President of THE ATLANTIC REFINING COMPANY, and that the seal affixed to this contract is the corporate seal of said corporation and that the said contract was signed and sealed on behalf of said corporation by authority of its Board of Directors, and

the said E. H. Blum acknowledged said contract to be the free act and deed of said corporation.

WITNESS my official signature and seal at Dallas, Texas, on the day, month and year first above written.

EDMEA BARR VANDERWALL,
(SEAL) *Notary Public*

My commission expires
June 1, 1945.

[fol. 99]

ITEM NO. F BY REFERENCE

WAR ASSETS ADMINISTRATION
WASHINGTON 25, D. C.

October 26, 1948.

In reply refer to:
PIN-G

Plancor 1118

Union Sulphur Company
(Lake Charles Pipe Line)
Lake Charles, Louisiana

FPC Gas Rate
Schedule No. 55
Supplement No. 1
Filing Date: 10-1-54
Effective Date: Accepted

The Atlantic Refining Company
P. O. Box 2819
Magnolia Building
Dallas, Texas

Attention: Mr. W. L. Bowser

Gentlemen:

Reference is made to your telegram of October 7, 1948 which is as follows:

"CONFIRMING OUR 'PHONE CONVERSATION OF OCT 5 1948 THIS TO ADVISE THAT WE ARE WILLING TO AMEND PARAGRAPH 111 (B) OF THE CONTRACT DATED SEPT 1 1943 BETWEEN THE ATLANTIC REFINING CO AS SELLER AND DEFENSE

PLANT CORP AS BUYER TO PROVIDE THAT THE PRICE TO BE PAID FOR GAS DELIVERED DURING THE SIX MONTHS PERIOD FROM SEP 1 1948 TO MARCH 1 1949 OF THE SECOND FIVE YEAR PERIOD OF THE CONTRACT SHALL BE THE BASE PRICES PER MCF PROVIDED IN PARAGRAPH 111 (A) IN THE CONTRACT PLUS ONE AND FORTY FIVE ONE HUNDREDTHS CENTS AND PROVIDED FURTHER THAT AT THE END OF THE ABOVE MENTIONED SIX MONTHS PERIOD THE PARTIES THEIR SUCCESSORS OR ASSIGNS WILL NEGOTIATE IN ACCORDANCE WITH PARAGRAPH 111 (B) AND (D) THE PRICE TO BE PAID [fol. 100] FOR GAS DELIVERED DURING THE REMAINING FOUR YEARS AND SIX MONTHS OF THE SECOND FIVE YEAR PERIOD AS PROVIDED IN THE CONTRACT. OTHERWISE CONTRACT TO REMAIN AS ORIGINALLY WRITTEN. FORMAL LETTER AGREEMENT FOLLOWS W L BOWSER THE ATLANTIC REFINING CO"

As authorized by the adjustment provision (paragraph IIIb) of the gas purchase contract dated September 1, 1943, this Administration accepts your offer of 1.45¢ additional adjustments per 1000 cu. ft. of gas from September 1, 1948 through the month of February 1949 and also accepts the proviso that at the end of the above period the parties, their successors or assigns will negotiate, in accordance with paragraph III b and d, the price to be paid for gas delivered during the remaining four years and six months of the second five-year period as provided in the contract. This will make the adjusted price for the period September 1, 1948 through February 1949, 3.65¢ for gas to DPC plants and 4.15¢ for gas sold for use by other than Government-owned plants.

This letter is submitted in quadruplicate. Please indicate your Company's acceptance by signing all copies at the place indicated and return the original and two copies to this office.

Sincerely yours,

M. L. GODMAN
M. L. Godman
Deputy Administrator
Office of Real Property Disposal

Accepted this 29th day of October, 1948

THE ATLANTIC REFINING COMPANY
By E. H. BLUM
Title *Vice President*

[fol. 101]

WAR ASSETS ADMINISTRATION

ZONE V

Z5-1-97

P. O. Box 6030
Dallas 2, Texas

The Atlantic Refining Co.
P. O. Box 2819
Magnolia Building
Dallas, Texas

Subject: WAA Contract No. WS 7 (p) 337
Formerly Unnumbered
Modification No. 1
No. Assigned September 21, 1948
Plancor 1118—Union Sulphur Pipeline, Lake Charles, Louisiana

Gentlemen:

It is desired that the following changes be made to Contract Number Unnumbered-dated 9/1/48 formerly held by Reconstruction Finance Corporation

(a) Change Contract Number from Unnumbered to WS 7 (p) 337

(b) Disbursing Officer as shown in Paragraph XVIX of Contract changed from Defense Plant Corporation, Washington, D. C. to Accounting Division, War Assets Administration, P. O. Box 6030, Dallas 2, Texas

[fol. 102] The above changes will be effective as of July 1, 1948 which is the date RFC transferred custody of Plancor 1118 to WAA.

Very truly yours,

ROBERT F. MCDONALD, JR.
Robert F. McDonald, Jr.
Contracting Officer

Accepted by:

THE ATLANTIC REFINING CO.
Dallas, Texas

By: (Signed) E. H. BLUM
(Title) *Vice President*

NOTE: Please sign and return the original and 3 copies of this Modification.

ITEM NO. G BY REFERENCE

THE ATLANTIC REFG. CO.

P. O. Box 2819

DALLAS 1, TEXAS

FPC Gas Rate
Schedule No. 55
Supplement No. 2
Filing Date: 10-1-54
Effective Date: Accepted

MODIFICATION NO. 3 TO GAS PURCHASE CONTRACT
NO. WS 7 (P) 337.

THIS SUPPLEMENTAL AGREEMENT, entered into this 16th day of February, 1949, between RECONSTRUCTION FINANCE [fol. 103] CORPORATION, successor in interest to Defense Plant Corporation, acting by and through War Assets Administrator, pursuant to the provisions of the Surplus Property Act of 1944, as amended, hereinafter referred to as the Buyer, and The Atlantic Refining Company, a Pennsylvania Corporation, hereinafter referred to as the Seller;

WITNESSETH:

WHEREAS, the parties hereto entered into a contract dated September 1, 1943, for a term of twenty-five years, covering the sale by the Seller and the purchase by the Buyer of natural gas, in the quantities provided in said contract, for delivery to Buyer's Lake Charles Pipe Line, Plancor 1118; and

WHEREAS, the said contract provides, in Paragraph III (a) thereof that the purchase price therein provided shall be effective for the first five (5) years from the date of the contract, and, in Subparagraph (b) of Paragraph III, that at the end of the first five year period the Buyer and Seller shall reach an agreement as to the price for gas sold and delivered under this contract to be effective during the second five year period; and

WHEREAS, the first five year period above referred to expired on September 1, 1948; and

WHEREAS, an agreement was reached between Buyer and Seller as to the purchase price for the period September 1, 1948 to March 1, 1949 in letter agreement dated October 26, 1948, and it is desired by the parties hereto that a new agreement be reached as to the price to be effective during the remainder of the second five year period of the contract; and

WHEREAS, Seller and Buyer desire to modify the contract to provide for seller to be authorized to sell gas [fol. 104] from its North Tepetate Pool wells to others in addition to Buyer;

NOW, THEREFORE, the parties hereto, in accordance with the terms of the said contract and in consideration of the premises and the mutual covenants and conditions hereinafter set forth, do hereby mutually agree as follows:

1. Paragraph III of the said contract of September 1, 1943, is hereby amended to provide that, for the period beginning March 1, 1949, and ending August 31, 1953, the price of gas shall be five cents (5¢) net per one thousand (1,000) cubic feet of gas received at the central point herein provided for delivery into Buyer's pipe line system, and, in addition, Buyer shall reimburse Seller for all state severance taxes, or similar taxes, which Seller is obligated to pay and has paid to the State of Louisiana on such gas, it being understood and agreed that, should any portion of the gas transported by Buyer through its pipe line system, as herein referred to, be sold directly or indirectly to any person, firm or corporation for use other than in a

Government owned plant, or to other than a Governmental Agency or Government owned plant or corporation, or should any portion thereof be used by any future owner of said line other than a Governmental Agency or Government owned plant or corporation, Seller shall receive for its "proportionate part" of such gas so sold or used one-half cent (½¢) per thousand cubic feet in addition to the net price of five cents per thousand cubic feet hereinabove fixed, making a total net price of five and one-half (5½¢) cents per thousand cubic feet; such "proportionate part" to be that proportion of the sales to, or use by private parties during a calendar month that the quantity of gas purchased by Buyer from Seller during such month bears [fol. 105] to the total quantity of gas purchased by Buyer from Seller and all others during such month and delivered into Buyer's pipe line system.

2. Paragraphs I and II of said Gas Purchase Contract are hereby amended so that,

(1) Seller may, at any time and from time to time, sell to any purchaser or purchasers it chooses, by contracts for term of not to exceed ten (10) years, all or any part of that amount of gas which Seller shall be allowed under the applicable law and regulations to produce from its wells in the North Tepetate Pool (hereinafter called SELLER'S PRODUCTION ALLOWABLE) which is in excess of 25,000,000 cubic feet per day but not in excess of 35,000,000 cubic feet per day;

(2) At any time and from time to time when Buyer has not taken (or paid for it not taken) under said contract as amended, during the immediately preceding period of six (6) months, an average of as much as 25,000,000 cubic feet of gas per day, Seller may, after giving thirty (30) days' notice to Buyer, sell to such purchasers as it may select, by contracts for term of not to exceed five (5) years, up to one-half of that amount per day by which 25,000,000 cubic feet exceeds the average daily amount Buyer has taken (or paid for if not taken) during said six months' period; provided, however, that Buyer shall have the prior right within said period of thirty (30) days after such notice to elect to increase immediately the amount of

gas it is obligated to take (or to pay for if not taken) under said contract; as amended, for a period of not less than five (5) years so as to include one-half or more of such excess; and provided, further, that all such contracts with other purchasers for the sale of said gas shall provide [fol. 106] that Buyer shall have first call upon SELLER'S PRODUCTION ALLOWABLE from said wells up to the number of cubic feet of gas per day which Buyer is then entitled to take under said contract, as amended; and

(3) In the event SELLER'S PRODUCTION ALLOWABLE exceeds 35,000,000 cubic feet of gas per day, Seller may at any time and from time to time, after giving thirty (30) days' notice to Buyer, sell to such purchasers as it may select by contracts for term of not to exceed ten (10) years, all or any part of such excess; provided, however, that Buyer shall have the prior right within said period of thirty (30) days after such notice to elect to increase immediately the amount of gas it is obligated to take (or to pay for if not taken) under said contract, as amended, for a period of not less than ten (10) years so as to include all of such excess which Seller desires to sell.

3. Buyer may, at its option, pay Seller for gas which it is entitled to take but does not take under said contract, as amended, in which event the gas so paid for but not taken shall be deemed, for all purposes of said contract, as amended, to have been taken by Buyer thereunder.

4. In no event shall Seller be required, except at its election from time to time, to furnish more than 25,000,000 cubic feet of gas per day to Buyer under said contract, as amended.

5. In addition to the above, Buyer agrees to inform Seller, on or before the 20th day of each month, of the estimated amount of gas it shall require under said contract, as amended, for the succeeding month, and Seller may thereafter make such disposition as it desires of the difference in the amount which Buyer is entitled to take for that month and the amount which it estimates that it shall require thereunder for that month.

[fol. 107] 6. All conflicting provisions of the above mentioned Gas Purchase Contract, as amended, are hereby amended so as to give effect to the foregoing provisions hereof, and except as herein amended, all of the terms and conditions of the said contract of September 1, 1943, shall remain and continue in full force and effect.

7. This modification No. 3 is to be effective as of the first day of March 1949.

8. Letter agreement between Buyer and Seller dated October 26, 1948, setting forth the purchase price for the period September 1, 1948 to March 1, 1949, is hereby designated as Modification No. 2 to Contract WS 7 (p) 337.

In Witness Whereof, the parties hereto have caused this Modification No. 3 to be executed.

Reconstruction Finance Corporation
Acting by and through
War Assets Administrator

By Robert F. McDonald, Jr.
Robert F. McDonald, Jr.
Contracting Officer

Witnesses:

Evelyn E. Smallwood
Margaret Wootton

The Atlantic Refining Company
By E. H. Blum
Vice-President

Attest:

L. A. Sunkel
Asst. Secretary

[fol. 108]
State of Texas
County of Dallas

On this 11th day of February, 1949 before me appeared E. H. Blum, to me personally known, who, being by me duly sworn, did say that he is vice-President of The At-

LANTIC REFINING COMPANY, a corporation, and that the seal affixed to this instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said E. H. BLUM acknowledged said instrument to be the free act and deed of said corporation.

WITNESS my official signature and seal at Dallas, Texas on the day, month and year first above written.

/s/ DORIS HOLCOMBE
Doris Holcombe
Notary Public

(SEAL)

STATE OF TEXAS
COUNTY OF DALLAS

On this 16th day of February, 1949, before me appeared ROBT. F. McDONALD, to me personally known, who, did acknowledge and say that he is Contracting Officer of War Assets Administration, which has no seal, and that the said instrument was signed and sealed on behalf of said War Assets Administration with full authority, and the said ROBT. F. McDONALD acknowledged said instrument to be the free act and deed of said War Assets Administration, and that he signed the same for the purposes and consideration therein expressed.

[fol. 109] WITNESS my official signature and seal at Grand Prairie, in Dallas County on the day, month and year first above written.

(SEAL) /s/ MARGARET G. BECK
Notary Public in and for
Dallas County, Texas

Margaret G. Beck

My commission expires June 1, 1949

Item No. H by Reference

WESTERN UNION

FPC Gas Rate
Schedule No. 55
Supplement No. 3
Filing Date: 10-1-54
Effective Date:
Accepted

DB 120 1949 MAY 25 PM 5 02

D. LLB 278 LONG GOVT PD-WUX DALLAS TEX 25 444 P-

ATLANTIC REFG CO-
MAGNOLIA BLDG BOX 2819 DAL (GK)-

THIS WILL ADVISE THAT PLANCOR 1118, LAKE CHARLES PIPE LINE, WAS SOLD TO LA NATURAL GAS CORPORATION, COMMERCIAL BANK BLDG, SHREVEPORT, LA EFFECTIVE MAY 11, 1949. THIS IS YOUR NOTICE THAT CONTRACT WS 7/P/337 DTD SEPT 1, 1943 AS AMENDED BETWEEN YOUR ORGANIZATION AND THE GOVERNMENT REPRESENTED BY WAR ASSETS ADMINISTRATOR HAS BEEN TRANSFERRED TO LOUISIANA NATURAL GAS CORP EFFECTIVE 8.00 AM CST MAY 11, 1949. ALL EXPENSES, OBLIGATIONS AND RESPONSIBILITIES UNDER CONTRACT AND PAYMENT FOR GAS RECEIVED FROM YOU AFTER SAID TIME AND DATE IS THE RESPONSIBILITY OF THE LOUISIANA NATURAL [fol. 110] GAS CORP. PLEASE ACKNOWLEDGE RECEIPT OF THIS TELEGRAM BY WIRE.

EN/RGP-PPM-R/61/WINSOR

WALLACE WAR ASSETS ADMN-

The Atlantic Refg. Co.
P. O. Box 2819
Dallas 1, Texas

1118 LA 11 1949 WS 7/P/337 1 1943 8.00 AM CST 11 1949
EN/RGP-PPM-R/61/WINSOR

RECEIVED
Oct 23 1952
NATURAL GAS SECT.

EXCERPTS FROM ITEM NO. J BY REFERENCE

"FPC Gas Rate Schedule No. 6
Filing Date: August 31, 1954
Effective Date: Accepted

AGREEMENT dated this 23rd day of February, 1951, between Tennessee Gas Transmission Company, a Delaware corporation, herein called "Buyer", and Shell Oil Company, a Delaware corporation, herein called "Seller", * * *.

"If at any time the cost per MCF of gas purchased by Buyer from any gas producer whomsoever in fields located in whole or in part within the limits of Commission District No. 3 of the Railroad Commission of Texas, as constituted at the date of this contract, shall be greater than the cost per MCF of gas purchased hereunder, Buyer will increase the price per MCF payable to Seller for gas delivered hereunder currently as deliveries are made, and only during periods in which Buyer in paying such greater cost to such other gas producer, by an amount equal to the difference between highest cost per MCF paid at the time by [fol. 111] Buyer to any such gas producer and the cost per MCF payable hereunder.

"If there is now or hereafter levied any Federal or State of Texas production, severance, gathering or similar tax in addition to or greater than those being levied on January 1, 1950, in respect of or applicable to the gas delivered hereunder and for which Seller is liable, so long as such additional or greater tax is in effect and paid by Seller on such gas, Buyer will reimburse Seller for three-fourths (¾) of the amount by which such additional or greater tax shall exceed the taxes then levied. The amount for which reimbursement is due may be billed by Seller monthly, or at the end of each calendar year."

[In its entirety, Item J by Reference is made up of 34 agreements filed with the Federal Power Commission to which Shell Oil Company is a party, each of which contains a price escalation provision. In addition to the provision printed immediately above, price escalation provisions substantially similar thereto are contained in eight other agree-

ments with Tennessee Gas Transmission Company. The dates of these agreements and the Shell Oil Company FPC Gas Rate Schedule numbers are as follows: February 1, 1953-No. 14 [R. 841]; April 1, 1956-No. 92, Supp. 3 [R. 1464]; March 3, 1955-No. 128 [R. 1575]; March 29, 1955-No. 130 [R. 1604]; October 1, 1953-No. 131, Supp. 1 [R. 1643]; November 1, 1955-No. 136 [R. 1708]; May 10, 1956-No. 137 [R. 1736]; and June 3, 1956-No. 143 [R. 1868].]

"FPC Gas Rate Schedule No. 10
Filing Date: August 31, 1954
Effective Date: Accepted

Gas Purchase Contract

THIS AGREEMENT Made and entered into as of this 18th day of June, 1948, by and between SHELL OIL COM- [fol. 112] PANY, a Delaware corporation (hereinafter referred to as "Seller") and TEXAS EASTERN TRANSMISSION CORPORATION, a Delaware corporation (hereinafter referred to as "Buyer"), * * *.

"3. If Buyer has entered into or should hereafter enter into a contract at any time or from time to time for the purchase of gas produced from a field or fields located in Texas or Louisiana for any part of the requirements of its Pipe Lines and such contract provides a price to be paid for such gas during any year, which differs from the price payable under this contract during the same year, Buyer shall promptly notify Seller thereof, giving full information as to the price provisions of such contract the terms thereof, and all other provisions of such contract which affect the remuneration to the Seller thereunder. Seller shall have the option within thirty (30) days after receipt of such information from Buyer to have such price provisions applied to gas thereafter delivered hereunder for the term of this contract or the term of such other contract, whichever term is the shorter, but subject to change by any subsequent election by Seller, as herein provided. Should such other contract have a shorter term than this contract, then for the period following the expiration of

apply. Should Seller not elect to accept any such different price provisions, it shall thereupon be foreclosed as to such rejected provisions for the duration of this contract."

[fol. 113] "FP" Gas Rate Schedule No. 12
Supplement No. 1
Filing Date: August 31, 1954
Effective Date: Accepted

THIS AMENDATORY AGREEMENT made and entered into this 1st day of January, 1950, by and between TENNESSEE GAS TRANSMISSION COMPANY, a Delaware corporation, hereinafter referred to as "Buyer", and MAGNOLIA PETROLEUM COMPANY, a Texas corporation, SUNRAY OIL CORPORATION, a Delaware corporation, SINCLAIR OIL AND GAS COMPANY, a Maine corporation (successor to Sinclair Prairie Oil Company, a Maine corporation), SUN OIL COMPANY, a New Jersey corporation, SHELL OIL COMPANY, a Delaware corporation (successor to Shell Oil Company, Incorporated, a Virginia corporation), . . .

• • • • • • •

"(c) If, at any time after September 1, 1952, the cost per MCF of gas purchased by Buyer from any gas producer in fields located in whole or in part within District No. 4 of the State of Texas, as constituted by the Railroad Commission of Texas at the date of this contract, shall be greater than the cost per MCF of gas purchased hereunder, Buyer will increase the price per MCF to Seller for gas delivered hereunder, currently as deliveries are made, and only during periods in which Buyer is paying such greater cost to such other gas producer, by an amount equal to the difference between the highest cost per MCF paid at the time by Buyer to any such gas producer and the cost per MCF payable hereunder. As used in this paragraph, the term 'cost per MCF" shall mean the purchase price per MCF plus the dehydration charge per [fol. 114] MCF paid by Buyer, if any, and taxes paid or payable by Buyer, and such cost shall be determined on the same basis of measurement, quality, and terms of delivery as are provided for gas delivered hereunder."

"FPC Gas Rate Schedule No. 18
Filing Date: August 31, 1954
Effective Date: Accepted

Agreement

THIS AGREEMENT, made and entered into as of the 1st day of February, 1950, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation with offices at El Paso, Texas, hereinafter sometimes referred to as "Buyer" and sometimes referred to as "El Paso", and SHELL OIL COMPANY, a Delaware corporation with offices at Houston, Texas, and THE TEXAS COMPANY, a Delaware corporation with offices at Fort Worth, Texas, said last two named parties being hereinafter sometimes collectively referred to as "Sellers" and sometimes referred to as "Shell" and "Texas," respectively; . . .

* * * * * * *

C. If at any time subsequent to the date of this agreement Buyer shall purchase any quantity of gas at a point located within a radius of two hundred fifty (250) miles of the Town of Andrews, Texas (but excluding what is known as the Texas Panhandle Field, comprising the Counties of Carson, Potter, Gray, Wheeler, Hutchinson, Sherman, Hansford and Moore, in the State of Texas), and pay therefor a consideration higher than the consideration payable at the same time hereunder, then the consideration payable hereunder which is less than the consideration being paid at the same time under such other contract [fol. 115] shall be immediately increased so that it will equal the consideration being paid at the same time under such other contract, and such higher price hereunder shall continue in effect so long as any such higher price is paid under such other contract. In determining whether the consideration payable under such other contract is "higher" then the consideration payable for gas under this agreement, due weight shall be given to the provisions of this agreement as compared with such other contract as to quality of gas, delivery pressures, gathering and compressing arrangements, provisions regarding measurement of

gas, including deviation from Boyle's Law, taxes payable on or in respect to gas delivered, and all other pertinent factors.

[fol. 116]

PLEADINGS

Before the Federal Power Commission

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

In the Matter of

Shell Oil Company

Docket No. G-121191

Order Accepting Rate Schedule for Filing and Providing for Hearing—Issued March 13, 1957

On November 18, 1954 Shell Oil Company (Shell) tendered for filing as its June 7, 1954 rate schedule[1] its contract dated May 1, 1951 with Texas Gas Transmission Company (Texas Gas).

Such rate schedule shows an original rate for gas deliveries of 9.997c per Mcf (including 1.0c tax reimbursement); however, Shell in its accompanying billing statement showed without explanation a rate of 13.5c per Mcf (12.5c plus tax reimbursement) therefor. By letter of January 6, 1955, Shell was advised that, pending explanation, no action would be taken on the tender, denominated as Shell's FPC Gas Rate Schedule No. 153.

By filing of February 11, 1957, Shell has proposed a change of rate (the subject of a separate order issued in Docket No. G-12192 contemporaneously herewith), and has

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[1] See Regulations under the Natural Gas Act, Sec. 154.92 and 154.93.

explained its claim for the 13.5c per Mcf rate as based on a "favored nation" provision of Rate Schedule No. 153, which Shell claims, and Texas Gas denies, to have been triggered in February, 1954. It further appears that the issue of Shell's rates and charges effective on June 7, 1954 [fol. 117] (see Regulations Under the Natural Gas Act, Sec. 154.92 (a)) is the subject of proposed litigation between the parties to the contract.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission accept for filing Shell's said Rate Schedule No. 153, tendered November 18, 1954, and that the Commission enter upon a hearing concerning the effective rate thereunder on June 7, 1954.

The Commission orders:

(A) Shell Oil Company's contract dated May 1, 1951 with Texas Gas Transmission Company is accepted for filing as Shell's Rate Schedule No. 153.

(B) Pursuant to the authority contained in the Natural Gas Act, particularly Sections 4, 5, 15 and 16 thereof, and the Commission's General Rules and Regulations [18 CFR, Chapter I], a public hearing shall be held commencing on April 22, 1957 at 10:00 a.m. (EST) in a Hearing Room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C., for the purpose of determining and fixing the rate properly effective on June 7, 1954 for the sale of gas by Shell Oil Company under its FPC Gas Rate Schedule No. 153 to Texas Gas Transmission Company, and any other matters incident to such issue.

(C) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) of the Commission's Rules of Practice and Procedure [18 CFR 1.8 and 1.37 (f)].

By the Commission.

Joseph H. Gutride, Secretary.

[fol. 118]

BEFORE THE FEDERAL POWER COMMISSION

DECISION—Issued August 9, 1957

In the Matter of

SHELL OIL COMPANY

Docket No. G-12191

Upon an Order to Determine and Fix the Rate Properly Effective on June 7, 1954 Under FPC Gas Rate Schedule No. 153

APPEARANCES

For Shell Oil Company
Oliver L. Stone, Esquire, New York, New York
George C. Schoenberger, Jr., Esquire, New Orleans, Louisiana
William W. Westerfield, Jr., Esquire, New Orleans, Louisiana

For Texas Gas Transmission Corporation
Charles F. Detmar, Jr., Esquire, New York, New York
Loftus E. Becker, Esquire, New York, New York
Lawrence W. Keepnews, Esquire, Washington, D. C.

For Louisville Gas and Electric Company
Gavin Cochran, Esquire, Louisville, Kentucky
Samuel R. Wells, Esquire, Louisville, Kentucky

For the Staff of the Federal Power Commission
Robert M. Weston, Esquire, Washington, D. C.

Woodall, Presiding Examiner: On November 18, 1954, Shell Oil Company (Shell) tendered for filing, pursuant to Order No. 174-A, [1]as its June 7, 1954 rate schedule, a

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[1] Now incorporated in Regulations Under the Natural Gas Act; see Sec. 154.92-93.

[fol. 119] contract dated May 1, 1951, between Shell as seller and Louisiana Natural Gas Corporation (Louisiana Natural), as buyer, covering the sale of natural gas produced by Shell from the Chalkley Field, Cameron Parish, Louisiana. Louisiana Natural was a 100% owned subsidiary of Texas Gas Transmission Corporation (Texas Gas), and was merged into the latter company in June 1955. Texas Gas, pursuant to Article IX of the contract, has succeeded to all the rights and obligations of Louisiana Natural thereunder. Texas Gas has also succeeded to all of the rights of Louisiana Natural under a contract between Atlantic Refining Company (Atlantic) and Defense Plant Corporation dated February 16, 1949 (Item G herein), and under which contract Louisiana Natural had gained the rights of Defense Plant Corporation. Thus Texas Gas stood in contract relations to Shell under the May 1, 1951 contract (F. P. C. Gas Rate Schedule No. 153 (Item A herein)) and to Atlantic under Item G herein.

On March 13, 1957, the Commission issued an order that Shell Oil Company's contract dated May 1, 1951 (which had been tendered for filing on November 18, 1954) with Texas Gas is accepted for filing as Shell's F. P. C. Gas Rate Schedule No. 153.

Issue

By its March 13, 1957 order the Commission also set a hearing (later continued to convene at 10:00 a.m., EDST on April 29, 1957) "for the purpose of determining and fixing the rate properly effective on June 7, 1954 for the sale of gas by Shell Oil Company under its F. P. C. Gas Rate Schedule No. 153 to Texas Gas Transmission Company, and any other matters incident to such issue." [2]

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[2] As its Conclusion, the Staff's Brief recommends that this proceeding be dismissed "in respect of the contract interpretation question." The conclusion reads as follows:

"Under the settled interpretation of its powers and obligations, the Commission has no function in respect of determining and fixing the rate 'properly effective' on June 7, 1954, for the sale of gas by Shell to Texas Gas. The order of March 13, 1957, setting a hearing on the substantive question as to the correct rate under

[fol. 120] The question is not what price for gas Texas Gas was actually paying to Shell on June 7, 1954 or what dollars and cents Shell was actually receiving at that date because, as the Staff's Brief concludes: "It is uncontroverted that the rate actually being paid at June 7, 1954 was 8.997c per Mcf . . ." The Staff concludes that: "this is therefore the effective rate under such authorities." Their Brief had cited "In the Matter of Phillips Petroleum Company, Docket No. G-10908" and "In the Matter of Dorchester Corporation, Docket No. G-6505."

If these two cases are controlling upon the Commission as to all future determinations of the legally effective rate on June 7, 1954, so that it is only necessary to determine the dollars and cents actually being paid per Mcf of natural gas, then the Commission should agree with the Staff that its order of March 13, 1957 setting the hearing herein on the substantive question as to the correct rate, namely, what was the legally effective—"properly effective"—rate, under the Shell-Texas Gas contract was improper and of no avail and should be dismissed.

In such eventuality this decision should end here and now.

However, the undersigned, even if so empowered, does not agree that the Commission improperly issued the March 13, 1957 order setting the hearing herein for the [fol. 121] purpose of determining and fixing the properly effective rate under Shell's F.P.C. Gas Rate Schedule No. 153, because the Commission is both empowered and under law required to make such substantive determination and interpretation of the contract in question.

The recently decided *Trunkline* case holds squarely upon the controlling effect on this proceeding of the Commission's order setting this hearing, namely:

> "The order in the simplest and most direct words charted the course of this proceeding. . . . The result

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the Shell-Texas Gas contract was, on the Commission authorities, improper and of no avail. It is uncontroverted that the rate actually being paid at June 7, 1954, was 8.997c per Mcf; this is therefore the effective rate under such authorities. The Presiding Examiner should so find, and should dismiss the proceeding in respect of the contract interpretation question."

is that the Commission must adjudicate this matter within the full framework fashioned by it." [3]

The *Mobile* doctrine directly applies to the effect that the contract between the parties is controlling and cannot be unilaterally changed by the action of one of the parties.[4] Hence, unless there is a complete lack of jurisdictional power to interpret the contract between the parties to determine the existing legal relations of the parties on June 7, 1954 as to the contract price then in force under the contract, the Commission has irrevocally (sic) entered upon such an adjudicatory process. There is no absence of delegated authority to determine and fix the legally effective contract rate between Shell and Texas Gas on June 7, 1954. Under the law of *U. S.* v. *Western Pacific Railway Company* (1956), 352 U. S. 59, the Commission has exclusive primary [fol. 122] jurisdiction to construe the contract which is the effective rate schedule to determine the properly effective rate on June 7, 1954—the date of initiating producer rate regulation under the Phillips producer case.[5] To fail or refuse to exercise such unquestioned jurisdiction involves the substantial hazard that Shell would thereby lose its day in any adjudicatory forum to obtain such a judicial construction of its rate schedule on the threshold date of June 7, 1954. To speculate whether a court would make up the deficiency in a suit on the contract points up the hazard created. As the Supreme Court in the *Western Pacific R. Co.* supra construes the law analogously to exhaustion of administrative remedies, it is enough here to recognize the hazard thus engendered to reaffirm that here as in other

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[3] *Trunkline Gas Company* v. *F. P. C.* No. 16228, USCA (5th), decided July 23, 1957.

[4] *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation, et al.*, 350 U. S. 332. In support of the same underlying principle see *F.P.C.* v. *Sierra Pacific Power Company, et al.*, 350 U. S. 348. If by default one party can change the legally effective contract rate for rate regulation purposes, the validity of the whole contract procedure can be undermined.

[5] *Phillips Petroleum Co.* v. *Wisconsin* (1954), 347 U.S. 672.

areas, the existence of the primary and exclusive jurisdiction is accompanied by the regulatory duty to determine and fix the "properly effective" rate, which in this setting narrows the jurisdictional issue down to determine what is the rate agreed upon by the parties in their contract.

No party has even suggested that the Commission is without jurisdictional power or that public policy prevents the Commission from recognizing and giving effect to the contractual rate as of June 7, 1954. The Staff has said that "under the settled interpretation of its powers and obligations" in the *Phillips* case in Docket No. G-10908 and the *Dorchester* case in Docket No. G-6505, the Commission seemingly reached such a disabling conclusion. But such a construction of those two cases is shown to be unsound by the Briefs of Shell. Stated most succinctly the *Dorchester* case cannot be accepted as a precedent here, because it dealt with a different problem, namely, what sort of deficiency bond to require. Even though it tends actually to support Shell's position, it is not sound to apply [fol. 123] the case as a precedent. The same is true of the other proposed negative precedent. It is not sound to use it as a precedent because the Commission itself very carefully limited its action therein to that specific situation by the words: " . . . We consider that we should not, *at the present time in this proceeding* undertake to pass upon these matters, involving as they do an interpretation of the Phillips-Panhandle contract, and a purported determination of the private rights and obligations arising thereunder." (Italics supplied.) The limited action "at this time" and "in this proceeding" was repeatedly stressed. The case turned on requiring a new filing to effect a change in rates. "In that order we held that, notwithstanding that an increase in rates proposed by Phillips for sales to Panhandle Eastern Pipe Line Company (Panhandle) was due to an averred misunderstanding of the contract and a claimed consequent undercharge, Phillips must, in order to increase the rates it was charging on June 7, 1954, under its FPC Gas Rate Schedule No. 61 (which also constituted the contract between the parties), file a change in rates;

and that the mere filing of a revised billing statement did not suffice."[6]

When seeking case precedents another Phillips case—*Phillips Petroleum Co.* v. *F.P.C.* (1955) 10 Cir., 227 F2d 470, cited by Shell's Reply Brief, p. 31, clearly shows that the Commission has the primary jurisdiction to determine the legally effective rate under the existing contract on June 7, 1957. The contrasted decision of the same court in *Cities Service Gas Producing Company* v. *F.P.C.*, (1956) 10 Cir., 233 F.2d 726 (cert. den. November 12, 1956) both construes the Phillips case last cited and re-emphasizes [fol. 124] the Commission's power and duty to determine the contractual rate in force on June 7, 1954. Shell's Main Brief properly presents the law here (pp. 27, 28, 29).

Neither intervening private party denies the jurisdiction of the Commission to interpret Shell's contract. In fact, Texas Gas speaks clearly about it:

> "4. The Commission Has Jurisdiction
>
> "During the hearing on April 29th, the Presiding Examiner requested that the parties deal with the question of the extent of the jurisdiction of the Commission in the present proceeding (Tr. 104-11). We submit that the Commission has full jurisdiction—as well as the obligation—to interpret Shell's contract to the extent necessary to determine the Shell rate effective on June 7, 1954."[7]

Findings and Conclusions

Upon consideration of the entire record and the briefs of the parties, it is found and concluded:

1. The genesis of the dispute between Shell and Texas Gas out of which the issue herein arose are three contract provisions:

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[6] Order issued May 31, 1957 in Docket No. G-10908.

[7] Answering Brief of Texas Gas, page 23.

(A) The favored-nation clause contained in Article VI,[8] paragraph 3, of Shell's F.P.C. Gas Rate [fol. 125] Schedule No. 153, which is its gas sale contract of May 1, 1951 with Louisiana Natural, Texas Gas' predecessor in interest, which wholly owned subsidiary was merged into Texas Gas on June 30, 1955.

(B) A gas purchase contract dated September 1, 1943 between Atlantic and Defense Plant Corporation covering the purchase of "the entire gas production of all wells and leases in the North Tepetate Pool in which seller now or hereafter has a full or part interest" (Item E herein) which Atlantic contract became the property of Louisiana Natural as of May 11, 1949 by assignment and, hence, now belongs to Texas Gas, and stipulated a price of 2.2c net per Mcf of gas for the first five years and further provided as to price as follows:

"*Article III*

"(a) . . . .

"(b) At the end of the first five-year period, Buyer and Seller are to reach an agreement as to the price

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[8] Also described as a price escalation provision, and which reads as follows:

"If at any time after December 31, 1951, Buyer shall enter into a contract providing for the purchase by it of gas produced from a field or fields located, and delivered to Buyer, within a radius of fifty (50) miles of any point of delivery provided hereunder, Buyer shall forthwith notify Seller of such fact, and if the price per one thousand (1000) cubic feet at any time payable under such other contract is higher than the price payable hereunder, each price payable hereunder which is less than the price payable at the same time under such other contract shall be immediately increased so that it will equal the price payable under such other contract. In determining whether the price payable under such other contract is 'higher' than the price payable for gas under this contract, due consideration shall be given to the provisions of this contract as compared with such other contract as to quality of gas, delivery pressures, gathering and compressing arrangements, quantity, provisions regarding measurement of gas, including deviation from Boyle's Law, taxes payable on or in respect of gas delivered and all other pertinent factors."

for gas sold and delivered under this contract during the second five-year period. The price to be paid during such second five-year period is to be agreed upon at the beginning of such period after a survey of prevailing prices for gas being sold in similar quantities in the southwestern part of Louisiana.

[fol. 126] "(c) During succeeding five-year periods, prices to be paid will be determined at the beginning of each period in the same manner as provided for in paragraph (b) above.

"(d) In the event that the parties are unable to agree upon the price to be paid for gas after the first five-year period, in accordance with the arrangements set forth in paragraphs (b) and (c) above, such determination shall be submitted to arbitration in accordance with Condition XII."

This quoted provision is a provision for price negotiation for 5-year periods subsequent to the first 5-year period. The contract further provided that it remain in effect for the life of the North Tepetate Pool, but not to exceed 25 years. It also provided in Article XII for arbitration, which provision has not come into use.

(C) The agreements amendatory of the Atlantic contract, to wit: Supplement No. 1 (Item F) accepted on the 29th of October 1948 by which the price for gas was agreed upon for the period September 1, 1948 through the end of February 1949; Supplement No. 2 (Item G) dated the 16th of February, 1949 by which the price for gas was agreed upon for the period beginning March 1, 1949 and ending August 31, 1953; and Supplement No. 3 (Item H) being a telegram from War Assets Administration to Atlantic giving notice of transfer of the Atlantic contract to Louisiana Natural effective on May 11, 1949, are not in issue herein. But Supplement No. 4 (Exhibit 9 herein), the agreement dated February 17, 1954 by which the price for gas was agreed upon for

the period beginning September 1, 1953 and ending August 31, 1958 at 12.2c net per Mcf at 15.025 p.s.i.a. plus .3c severance tax and 1c gathering tax payable to the State of Louisiana on such gas raises the question in dispute between [fol. 127] Shell and Texas Gas as to whether the February 17, 1954 Atlantic-Texas Gas price agreement caused the most favored nation or escalation clause in Shell's F.P.C. Gas Rate Schedule to become effective as of September 1, 1953, so that the price to Texas Gas during the next 5-year period for gas from Shell would equal the 12.5c plus gathering taxes (12.2c per Mcf plus .3c severance tax) payable by Texas Gas during that period for gas purchased from Atlantic. For convenience these three contract clauses will be referred to as (A) Shell's most favored nation or escalation clause; (B) the Atlantic contract price negotiation clause; and (C) the Atlantic third 5-year price agreement. No controversy between the parties is found to exist as to the facts found under this Finding No. 1.

2. For Shell's escalation clause to be triggered by any contract made by Texas Gas three things were required:

First, Texas Gas' contract must be after December 31, 1951, which the Atlantic third 5-year price agreement is.

Second, the contract must provide for the purchase of gas by Texas Gas "produced from a field or fields located, and deliver to 'Texas Gas,' within a radius of fifty (50) miles of any point of delivery provided" in Shell's F.P.C. Gas Rate Schedule No. 153. The parties have stipulated that the North Tepetate Field and the delivery point from Atlantic to Texas Gas meet such 50-mile provision.

Third, the price payable by Texas Gas under such contract is higher than the price then payable under

Shell's Rate Schedule No. 153, which condition is also met by the Atlantic third 5-year price agreement. The parties do not contest any of these three facts found in Finding No. 2.

3. By a filing on February 11, 1957, Shell proposed a rate increase to 16.75c per Mcf plus tax reimbursement as [fol. 128] Supplement No. 1 to its F.P.C. Gas Rate Schedule No. 153, which has been suspended by an order of the Commission issued on March 13, 1957, in another docket (G-12192) and such increase is not at issue herein. In connection with that filing Shell explained its claim that its favored nation clause had been triggered and that the price under its F.P.C. Gas Rate Schedule No. 153 had escalated prior to June 4, 1954, and that, hence, the legally effective contract rate on June 7, 1957 was 12.2c (net of tax reimbursement). Accompanying the filing of Rate Schedule No. 153, Shell had included a sample billing prepared by it to indicate that "we claim the contract price is 12.5 per Mcf (effective from September 1, 1953, but we have received only 8.997c per Mcf. This matter is now under negotiation with purchaser."[9]

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[9] The hearing order issued March 13, 1957 contained the following recitation:

"Such rate schedule shows an original rate for gas deliveries of 9.997 cents per Mcf (including 1.0 cent tax reimbursement); however, Shell in its accompanying billing statement showed without explanation a rate of 13.5 cents per Mcf (12.5 cents plus tax reimbursement) therefor. By letter of January 6, 1955, Shell was advised that, pending explanation, no action would be taken on the tender, denominated as Shell's FPC Gas Rate Schedule No. 153.

"By filing of February 11, 1957, Shell has proposed a change of rate (the subject of a separate order issued in Docket No. G-12192 contemporaneously herewith), and has explained its claim for the 13.5 cents per Mcf rate as based on a 'favored nation' provision of Rate Schedule No. 153, which Shell claims, and Texas Gas denies, to have been triggered in February, 1954. It further appears that the issue of Shell's rates and charges effective on June 7, 1954 (see Regulations Under the Natural Gas Act, Sec. 154.92 (a)) is the subject of proposed litigation between the parties to the contract.

"The Commission finds:

[fol. 129] 4. Although some evidence introduced by Texas Gas would seem to have relevance to the debtor-creditor relationship between Shell and Texas Gas, all counsel participating in the proceeding appear to agree that the Commission does not have jurisdiction to determine herein matters of debt nor to adjudicate accord and satisfaction or other pleas in abatement which might lie in a proper court action on the contract. It is held that the Commission's jurisdiction is that which it stated in its order, namely, to determine and fix the rate properly effective on June 7, 1954 for the sale of gas by Shell under its F.P.C. Gas Rate Schedule No. 153 to Texas Gas. We, therefore, give no operative effect upon the sole issue here posed, to those facts in evidence, which bear upon possible laches by Shell in not earlier asserting its claim of escalation or upon the question of accord and satisfaction by reason of the acceptance of the lesser price as tendered by Texas Gas or by reason of responses to auditor's confirmation letters. Similarly the failure of Texas Gas (or its predecessor) to give notice to Shell of the Atlantic third 5-year price agreement is not deemed relevant to the determination lawfully involved in this proceeding.

5. The most favored nation or escalation clause in Shell's Rate Schedule No. 153 was brought into operation by the execution by Texas Gas of the Atlantic third 5-year price agreement dated February 17, 1954. Therefore, the effective contract price of gas on and after September 1, 1953 and for the ensuing 5-year period ending August 31, 1958 is that fixed on such February 17, 1954, namely, 12.2c plus .3c for severance tax plus 1c for gathering tax per Mcf at the pressure base of 15.025 p.s.i.a. of gas. The conclusive language of the Shell Rate Schedule's escala-

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"It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission accept for filing Shell's said Rate Schedule No. 153, tendered November 18, 1954, and that the Commission enter upon a hearing concerning the effective rate thereunder on June 7, 1954."

tion clause in relation to these facts are: "If . . . Buyer shall enter into a contract providing for the purchase by it of gas produced from a field or field located. . . . " The action which fulfilled the condition was, the making of a *new* price agreement by Texas [fol. 130] Gas with Atlantic, which is evidenced by the letter dated February 17, 1954 from Atlantic, to Louisiana Natural, and which the Buyer "Agreed to and Accepted this 22 day of February, 1954." (Exhibit 9 herein). The escalation clause did *not* require a complete gas purchase contract, as Texas Gas erroneously quotes its provision.[10] It merely required that the "Buyer shall enter into a contract providing for the purchase by it of gas" etc. It did not require a new or different source of gas than Buyer had theretofore contracted for. It merely provided for "gas produced from a field or fields located, and delivered to Buyer, within a radius of fifty (50) miles of any point of delivery provided hereunder. . . . " The argument between Shell and Texas Gas (in which Louisville Gas & Electric Company joined) as to whether the language is ambiguous, is a false issue. The language is clear enough to reveal the intent of the parties without resort to parole evidence or self-serving memoranda. To miss its plain meaning is to do violence to the generally accepted and reasonable meaning of the sequence of the words of the English language used. The simplest analysis reveals the heart of the matter. Shell sought to cause its selling price to rise to that called for by any other contract Buyer made for gas after an agreed date (December 31, 1951)—less than one year after the sale had been initiated, if the gas was produced in the same general area of competition as agreed upon (50 miles). The language was evidently broad; not narrowly technical in character. Contrary to Texas Gas' argument that the contract "could have so provided" . . . "if, as Shell argues, it had intended that its Louisiana Natural

[10] Answering Brief of Texas Gas, page 7, line 12.

price would escalate every time Louisiana Natural paid a higher price for gas in the defined area" (after the agreed date) the language of the contract clearly so provides exactly that by leaving the phrase, to wit: "a contract providing for the purchase by it of gas" [fol. 131] general in scope. That language other than that would produce the same intent, such as cited from some other contract by Texas Gas' Answering Brief is of no significance. The four events as conditions precedent to price escalation, for which Texas Gas contends have been satisfied, namely: (1) occurrence after December 31, 1951, which everyone conceded, (2) entry by Texas Gas into "a contract providing for the purchase by it of gas," which the February 17, 1954 third 5-year price agreement satisfied, (3) within a specified area, which everyone conceded, and (4) at a higher price, which obviously everyone conceded.

6. Turning now to the Atlantic contract price negotiation clause and the Atlantic third 5-year price agreement entered into pursuant thereto, it is obvious, of course, that the clause is *not* a 5-year periodic price escalation clause having fixed and agreed upon steps. The price increases must be agreed upon all over again for each 5-year period or resort had to arbitration. The Atlantic contract in Article III, Sections (b) and (c), beyond question requires that "the price to be paid during such second five-year period, is to be agreed upon at the beginning of such period," and that "during succeeding five-year periods, prices to be paid" must be agreed upon "at the beginning of each period." In the event that the parties are unable to agree upon the price to be paid after the first five-year period then arbitration must be resorted to. The record shows that the parties to that agreement had agreed upon the prices to be paid during the second 5-year period—September 1, 1948 to August 31, 1953, and although not done strictly in accordance with the contract, namely, at the beginning of such period, Texas Gas has alleged no failure of performance by its predecessors in interest. Supplement No. 1 (Item

F herein) was accepted on the 29th day of October 1948 (not on or before September 1, 1948) and it covered the period only from September 1, 1948 through February 28, 1949—6 months; not 5 years. Supplement No. 2 (Item G herein) covered the re-[fol. 132] maining 4½-year period. This supplemental agreement was signed by the Reconstruction Finance Corporation (RFC) successor in interest to Defense Plant Corporation, acting by and through War Assets Administrator, who expressly acknowledged that as amendatory of the Atlantic Contract (Item A herein) the supplemental agreement is contractually controlling. It is held that Supplement No. 4 (Exhibit 9 herein), which effected a new agreement as to the price to be paid by Texas Gas' predecessor during the third 5-year period (September 1, 1953 through August 31, 1958) is also contractually controlling and, therefore, constitutes "a contract providing for the purchase by" Texas Gas "of gas . . ." within the meaning of Section 3 of Article VI of Shell's Rate Schedule No. 153. Shell's Briefs correctly review the elemental principles of contract law, which in our view are too commonly known to the legal profession to require citations in support thereof. Of course, without a price for the gas to be sold the gas purchase contract falls. The agreement upon price for each succeeding 5-year period (unless supplied by the agreed upon alternative of arbitration) is indispensable to the continuance of the contractual relations of purchase and sale of gas.

Order

Wherefore, It Is Ordered, subject to review by the Commission, that:

(A) The rate effective on June 7, 1954, for natural gas sold and delivered by Shell Oil Company to Texas Gas Transmission Corporation under Shell Oil Company's F.P.C. Gas Rate Schedule No. 153, being a certain gas purchase contract dated May 1, 1951, by and between Shell Oil Company, producer and

seller, and Louisiana Natural Gas Corporation, the buyer, covering the sale of natural gas in the Chalkley Field, Cameron Parish, Louisiana, between September 1, 1953 and August 31, 1958, both inclusive [fol. 133] is 12.2 cents net for each 1,000 cubic feet at a pressure base of 15.025 p.s.i.a. of gas, and, in addition Texas Gas Transmission Corporation reimburses Shell Oil Company for all severance and gathering taxes payable by Shell Oil Company to The State of Louisiana on such gas.

(B) Within forty-five (45) days from the effective date of this order, Shell Oil Company shall file with the Federal Power Commission under its F.P.C. Gas Rate Schedule No. 153, a billing statement, reflecting the rate for the sale and purchase of natural gas specified above in ordering clause (A) as the legally effective and exclusively collectible and payable rate therefore during the period therein stated, subject to the provisions of the Natural Gas Act.

Emery J. Woodall, Presiding Examiner.

Filed: August 9, 1957
Issued: August 9, 1957

Before the Federal Power Commission

Before Commissioners: Jerome K. Kuykendall, Chairman, Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

Docket No. G-12191

In the Matter of

Shell Oil Company

Order Determining Rate—Issued November 12, 1957

Pursuant to the Commissioner's order issued March 13, 1957, the purpose of this proceeding is to determine Shell

[fol. 134] Oil Company's rate properly effective on June 7, 1954, for the sale of gas from the Chalkley Field, Cameron Parish, Louisiana to Louisiana Natural Gas Corporation. The rate schedule involved was tendered for filing by Shell on November 18, 1954, as its rate schedule effective on June 7, 1954.[1] The rate schedule was embodied in a contract dated May 1, 1951, between Shell and Louisiana Natural, which was merged into its parent company, Texas Gas Transmission Corporation, in June of 1955. In order to simplify the discussion we shall refer to Texas Gas as the buyer with respect to periods both before and after the merger.

The price for gas actually set forth in Shell's contract with Texas Gas was 8.997 cents per Mcf at 15.024 psia for the period January 1, 1952, through December 31, 1956, excluding one cent tax reimbursement. However, in connection with the filing Shell submitted a billing form stating that it claimed that the contract price was 12.5 cents per Mcf effective from September 1, 1953 (including a severance tax of .3 cents per Mcf but excluding a gathering tax of one cent per Mcf), although it was actually receiving only 8.997 cents per Mcf. On February 11, 1957, Shell filed a supplement to its rate schedule purporting to increase the rate to Texas Gas from 12.5 cents to 16.75 cents per Mcf, exclusive of the gathering tax. In this filing Shell explained its claim for the 12.5 cent per Mcf rate under the existing contract and rate schedule as based on a "favored nation" provision in the contract which it claimed had been "triggered" on February 17, 1954, by Texas Gas entering into a contract for the purchase of gas at 12.5 cents per Mcf at 15.025 psia from The Atlantic Refining Company. [fol. 135] On March 13, 1957, we accepted Shell's 1951 contract as its F.P.C. Gas Rate Schedule No. 153 and ordered a public hearing to determine the rate properly effective

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[1] We chose this date in our order No. 174-B, now incorporated in Regulations under the Natural Gas Act (see Sec. 154.92-93), as of which all independent producers should file their rates, for this was the date on which we were informed of our jurisdiction over the independent producers in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672.

June 7, 1954, and at the same time in docket No. G-12192 suspended Shell's increased rate of 16.75 cents per Mcf.

After intervention was permitted on the part of Texas Gas and Louisville Gas and Electric Company, the hearing was held on April 29, 1957. On August 9, 1957, the presiding examiner issued his decision in which he found that Shell's rate under its Rate Schedule No. 153, effective June 7, 1954, was 12.2 cents per Mcf at a pressure base of 15.025 psia (excluding taxes), and ordered Shell to file a billing statement in accordance with this determination. Exceptions were filed by Texas Gas, Louisville Gas and by the staff of this Commission.

Before proceeding to determine the effective rate on June 7, 1954, we note that it seems clear to us that we have full authority to do so as the presiding examiner found. As June 7, 1954, was the date of the *Phillips* case informing us that we had jurisdiction over the rates of independent producers, we chose this date in our order No. 174-B as of which they should file their effective rates with the Commission in accordance with the filing requirements of the Natural Gas Act (Regulations, Section 154.92 (a)). Any changes in rate made after this date would have to be filed in accordance with section 4 (d) of the Act and our Regulations and could be suspended under section 4 (e). It would, of course, be necessary in connection with any rate proceeding after suspension of increased rates, such as the proceeding actually instituted against Shell by our order issued March 13, 1957, in docket No. G-12192, that we know the rate previously in effect both for the purposes of the [fol. 136] proceeding and in computing refunds if it should turn out that the new rate, or part of it, was not justified. We, therefore, instituted this proceeding to make this determination as we have in other instances. In two cases reaching opposite results as to whether a suspendible rate change had been instituted after June 7, 1954, our authority to determine the rate effective June 7, 1954, was in effect upheld. *Phillips Petroleum Co.* v. *F.P.C.*, 227 F. 2d 470 (CA 10) certiorari denied 350 U. S. 1005; *Cities Service Gas Producing Co.* v. *F.P.C.*, 233 F. 2d 726 (CA 10); certiorari denied. 352 U. S. 911.

Turning to the substance of this controversy, we differ with the presiding examiner's conclusion that Shell's effective rate for its sale to Texas Gas as of June 7, 1954, was 12.2[2] cents per Mcf at 15.025 psia, but find that the effective rate on June 7, 1954, was 8.997 cents per Mcf at 15.025 psia excluding taxes, for that was the charge actually being collected from Texas Gas. Furthermore, we also arrive at this conclusion by our determination that the 8.997 cent charge was that provided in Shell's 1951 contract with Texas Gas, for we are of the opinion that the escalation clause in Shell's contract was not "triggered" by Texas Gas' agreement with Atlantic for increased rates dated February 17, 1954.

In our previous cases including *Dorchester Corporation,* 14 F.P.C., Docket No. G-6505, November 14, 1955, and *Phillips Petroleum Company,* 17 F.P.C. 503, we have held that the legally effective rate on June 7, 1954, was the rate actually effective and actually being paid on that date. In the present case, as we have noted, the price stated in the [fol. 137] contract for the period January 1, 1952 to December 31, 1956 is 8.997 cents per Mcf measured at 15.025 psia. The undated invoice filed with the rate schedule sets forth a contract price of 12.5 cents per Mcf but notes:

> We claim that the contract price is 12.5c per Mcf (effective from September 1, 1953), but we have received only 8.997c per Mcf. This matter is now under negotiation with purchaser.

Also attached to the filing was a statement on Texas Gas' letterhead dated May 31, 1954, crediting Shell's account for the gas purchased from Shell at the rate of 8.997 cents per Mcf. It clearly appears, therefore, that the price actually collected on June 7, 1954, is 8.997 cents, and this under our previous decisions is the effective rate as of that date and continues on from that date until changed in accordance with Section 4 of the Natural Gas Act and our Regulations.

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[2] Excluding a .3 cent severance tax and a one-cent gathering tax.

Using this approach we need not determine what was Shell's proper rate under its 1951 contract with Texas Gas as of June 7, 1954, but even if we do so, as an alternative ground, the result is the same on the basis of this record. For as already stated, we are of the opinion that the 8.997 cent charge in Shell's contract was not escalated by Texas Gas' purchase of gas at a higher price from Atlantic as Shell claims. The agreement with Atlantic does not constitute a new contract as required by Shell's escalation clause, but merely represents action taken under a pre-existing contract between Texas Gas and Atlantic.

Shell's contract was prepared by Texas Gas and was accepted by Shell in Houston, Texas. The gas reserves were located in the Chalkley Field in Louisiana and delivery was to be made at a central point in that field. Article VI, paragraph 3, of the contract provides as follows for escalation of the price where the buyer enters into a contract for the purchase of gas from another party:

> [fol. 138] 3. If at any time after December 31, 1951, Buyer shall enter into a contract providing for the purchase by it of gas produced from a field or fields located, and delivered to Buyer, within a radius of fifty (50) miles of any point of delivery provided hereunder, Buyer shall forthwith notify Seller of such fact, and if the price per one thousand (1000) cubic feet at any time payable under such other contract is higher than the price payable hereunder, each price payable hereunder which is less than the price payable at the same time under such other contract shall be immediately increased so that it will equal the price payable under such other contract. . . .

The record shows that by letter dated February 17, 1954, Texas Gas entered into an agreement with Atlantic for the redetermination up to 12.5[3] cents per Mcf at 15.025 psia of

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[3] The letter agreement stated the price to 12.2 cents per Mcf but this excluded the .3 cent state severance tax which would bring the total price up to 12.5 cents (not including the one-cent gathering tax).

the price of gas received from Atlantic under a contract dated September 1, 1943. This basic contract was entered into between Atlantic and Texas Gas' predecessor in interest, Defense Plant Corporation, and provided for the sale and delivery of gas to the buyer in the North Tepetate pool of Acadia Parish, Louisiana, within the geographical limitations of the escalation clause.

The contract was signed by Atlantic's representative in Dallas, Texas, and at a later date by the representative of the Defense Plant Corporation in the District of Columbia.

The contract provided for price redeterminations after the end of succeeding five-year periods in the following language contained in Condition III:

> (b) At the end of the first five-year period, Buyer and Seller are to reach an agreement as to the price [fol. 139] for gas sold and delivered under this contract during the second five-year period. The price to be paid during such second five-year period is to be agreed upon at the beginning of such period after a survey of prevailing prices for gas being sold in similar quantities in the southwestern part of Louisiana.
>
> (c) During succeeding five-year periods, prices to be paid will be determined at the beginning of each period in the same manner as provided for in paragraph (b) above.
>
> (d) In the event that the parties are unable to agree upon the price to be paid for gas after the first five-year period, in accordance with the arrangements set forth in paragraphs (b) and (c) above, such determination shall be submitted to arbitration in accordance with Condition XII.

Condition XII makes it clear that where the parties are unable to agree arbitration of the price dispute is assured. It provides that one arbitrator is to be appointed by Seller, one by Buyer, and a third by the two so chosen. In case one party refuses to appoint a second arbitrator, the first arbitrator shall act alone; if two arbitrators are chosen and fail to select a third, the third arbitrator shall be ap-

pointed by the senior judge of the Fifth Federal Judicial Circuit upon application by either party. The arbitration provision was not invoked for the second five-year period, nor, as we have seen, for the third period beginning September 1, 1953. Pursuant to the price redetermination agreement the price as of the latter date had reached 5.437 cents per Mcf plus reimbursement of a .3 cent severance tax and one-cent gathering tax per Mcf, and, as we have seen, by the letter agreement of February 17, 1954, was fixed at 12.2 cents per Mcf for the third five-year period plus .3 cents severance tax and one-cent gathering tax.
[fol. 140] The question before us is whether the letter agreement constitutes a new contract for the purchase of gas or whether it merely represents action taken pursuant to the pre-existing 1943 Atlantic contract. We believe the latter is the correct view. In reaching this result it is not necessary for us to consider whether paragraph (b) quoted above providing for agreement after a survey of prevailing prices is certain enough to extend the contract after the first five-year period, for paragraph (d) provides for a definite method by which a price will be fixed in case the parties fail to agree. The cases show that a contract will not fail for want of certainty where a future price is to be fixed by arbitrators or other third parties. *Sanitary Farm-Dairies* v. *Gammel*, 195 F. 2d 106 (CA 8); *Aitchison* v. *Anderson*, 183 F. 2d 922, 925 (CA 9); *United Fuel Gas Co.* v. *Columbian Fuel Corporation*, 165 F. 2d 746 (CA 4); *Baum* v. *Rock*, 106 Colo. 567, 108 P. 2d 230, 232-233.

In the *United Fuel* case the producer Columbian Fuel entered into a contract to sell gas to United Fuel at 15 cents up to November 1, 1940. On that date and every five years thereafter the price was to be determined by agreement or arbitration but was to be not less than 15 cents per Mcf. The parties agreed on 15 cents per Mcf during the first five-year period but a dispute arose over an arbitration award for the second five-year period beginning November 1, 1945. In discussing the contract and upholding the award, there was no suggestion that the contract was invalid although it left the price open for agreement or arbitration. In the Baum case the court held that uncertainty in the contract as to the amount of a product to

be purchased in the renewal period was relieved by provision for arbitration.

We do not think that any possible view as to the applicable state law alters this conclusion. The Shell 1951 contract, containing the rate involved, was clearly made [fol. 141] in Texas; from the signatures it would appear that the 1943 Atlantic contract was made in the District of Columbia; both were to be performed in Louisiana.[4] The Uniform Sales Act in force in the District provides that "The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed . . ." and refers to "a contract to sell or a sale of goods at a price or on terms to be fixed by a third person" showing that a price indefinite in the contract may be fixed by an outside party. (D. C. Code §28-1109, 1110). The Uniform Sales Act is not in force in Texas, but the law of that state does not appear to differ on this point.

If we apply the law of Louisiana, as advocated by Shell, the result appears to be the same. It is true that under the Louisiana Civil Code a certain price is necessary to perfect a contract of sale and a sale (LSA, Articles 2439, 2456, 2464, 1764), but the Code also provides (Article 2465);

> The price, however, may be left to the arbitration of a third person; but if such person can not, or be unwilling to make the estimation, there exists no sale.

As we have seen here the Atlantic contract provides a sure method by which arbitration will be brought about. In *Louis Werner Sawmill Co.* v. *O'Shee*, 111 La. 817, 35 So. 919, there was an undertaking to purchase land with the price dependent on the amount of lumber on it as determined by two estimators to be chosen by the respective [fol. 142] parties. Since the two estimators could not agree, the court noted that either party had the power to nullify

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[4] According to the Restatement of the Conflict of Laws (S332) the law of the place of contracting determines the validity and effect of a promise with respect to, among other things, the mutual assent or consideration, if any, required to make a promise binding and any other requirements for making a promise binding. See also Beale, The Conflict of Laws (1935) SS 332.4, 346.5.

the agreement by refusing to appoint an expert, and would not enforce the contract. It, however, quoted a French authority as follows:

> If, for example, after the parties had said that the sale was made for a price as to which they would agree thereafter, they added, or which, in case of disagreement, should be fixed by an expert to be appointed by the parties themselves or by the judge of the district, it is clear that there would be a sale, since it would no longer be within the power of the parties to prevent the fixing of the price. (35 So. at 921).

As said in *Brown* v. *City of Shreveport*, 15 So. 2d 234, (La. App.) "That which may be made certain in such a contract in legal contemplation is certain." (15 So. 2d at p. 236).

Because the questions of law here involved have been adequately briefed before the presiding examiner we do not believe any purpose would be served by holding oral argument as requested by Shell.

The Commission further finds:

(1) Shell is an independent producer of natural gas engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas by Shell to Texas Gas made pursuant to the provisions of Shell's F. P. C. Gas Rate Schedule No. 153 is a sale of natural gas for resale for ultimate public consumption within the meaning of the Natural Gas Act.

[fol. 143] (3) The charge for natural gas by Shell under its F. P. C. Gas Rate Schedule No. 153 to Texas Gas, effective June 7, 1954, is 8.997 cents per Mcf at 15.025 psia excluding the one-cent gathering tax.

The Commissioner orders:

(A) Within thirty days from the issuance of this order, Shell shall file a revised billing statement to reflect its effective rate on June 7, 1954, to Texas Gas under Rate Schedule No. 153.

(B) Exceptions filed with respect to the initial decision of the presiding examiner which are inconsistent with our action herein are hereby denied.

(C) Shell's motion for oral argument is hereby denied. By the Commission. Commissioner Connole concurring in the result.

Joseph H. Gutride, Secretary.

Docket No. G-12191

In the Matter of

SHELL OIL COMPANY

(Issued November 12, 1957)

CONNOLE, Commissioner, concurring in the result:

I concur with the result reached by the majority but dissent on one of the two grounds on which their determination is based.

The legally applicable and effective rate on June 7, 1954, is found in the contracts which we ordered the parties to file and which we denominated as rate schedules (Sec. 154.92-93 of Commission Rules) and is not measured by the monies which may have changed hands [fol. 144] at that time. In fact, if no monies at all had changed hands, the rate would still be that prescribed in the contract. I have demonstrated this proposition before. See my separate statements in *Re Dorchester Corporation*, G-6505, November 14, 1955, 14 F.P.C. ——, *Re Phillips Petroleum Company*, G-10908, April 5, 1957, 17 F.P.C. 503, and *Re Kerr-McGee Oil Industries, Inc.*, G-13181, November 1, 1957, 18 F.P.C. ——.

It has been specifically upheld by the United States Court of Appeals, Tenth Circuit, in *Phillips Petroleum Company* v. *Federal Power Commission*, 227 F. 2d 470, certiorari denied 350 U. S. 1005. Accordingly, I need only reiterate the validity of the proposition and assert its applicability here.

If no other issue were involved, I should be compelled to dissent from my Brothers on the result of this order, since the majority herein find that the legally effective and applicable rate on June 7, 1954, was measured by the monies changing hands on that date. However, because the majority determination is based on another proposition with whose reasoning I am in agreement, I must concur in the result. This second proposition states that the rate for the sales of gas here before us on June 7, 1954, was not affected by a letter of agreement by and between Texas Gas and The Atlantic Refining Company dated February 17, 1954. This proposition is sound in law and fact. As a result the rate in effect on June 7, 1954, according to the terms of the contract, is not that for which Shell contends.

The primary responsibility for the interpretation of the legal effect of tariff or rate schedules filed by regulated companies vests in the regulatory agency with whom they are filed. Preliminary resort to the Commission is required because the inquiry is essentially one of fact and of discretion in technical matters; and uniformity in the interpretation of so common a clause as is involved here can be obtained only if its determination is left to the Commission. *Great Northern R. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 291. [fol. 145] See also *Northwestern Public Service Co.* v. *Montana-Dakota Utilities Co.*, 181 F. 2d 19 (8th Cir. 1950).

Under our Rules the Texas Gas-Shell contract was filed as a rate schedule. The interpretation of the contract, therefore, *in its capacity as a rate schedule* is our responsibility primarily and to the extent that the discharge of this responsibility requires the interpretation of the legal effect of a given set of facts in the

light of its terms and conditions, we have the right and the duty to do so. This right and duty, of course, is to be distinguished from the invalid presumption by a regulatory commission to make conclusions of law on matters of strict private contract, the making of which has not been and, indeed, constitutionally could not be delegated to this Commission. See my separate statement in *Re American Louisiana Pipe Line Company*, G-10396, January 11, 1957, 17 F.P.C. 22. No attempt is made here to interpret terms of any contract, letter or other agreement in any capacity other than as a rate schedule and in any of its terms other than those directly affecting the applicability and effectiveness of the rates prescribed therein.

Exercising this jurisdiction, majority has undertaken to interpret whether the terms and conditions of the Texas Gas and Shell contract are affected by the letter agreement between Texas Gas and Atlantic. Majority has found that they are not. The determination is factually accurate, lawfully correct and logically unassailable. Inevitably it leads to the conclusion that the applicable and effective rate for the transaction here in question on June 7, 1954, was 8.997 cents per Mcf at 15.025 psia for the period January 1, 1952, through December 31, 1956, excluding one cent tax reimbursement, as provided in the original contract between Shell and the predecessor of Texas Gas dated May 1, 1951. Accordingly, I concur in the result reached by my Brothers.

William R. Connole

[fol. 146]

BEFORE THE FEDERAL POWER COMMISSION

Docket No. G-12191

IN THE MATTER OF SHELL OIL COMPANY

APPLICATION FOR REHEARING BY SHELL OIL COMPANY—
Filed December 11, 1957

• • • • • • •

Now comes Shell Oil Company (Petitioner) and shows that the Order Determining Rate issued herein by the Commission on November 12, 1957 is contrary to the law and the evidence and is erroneous; that Petitioner is aggrieved thereby; and that the Commission should reconsider the conclusions reached in said Order, grant a rehearing thereof and affirm the decision of the Presiding Examiner.

The grounds relied upon in support of this petition are the following:

1. The decision of the Presiding Examiner is correct in fact and in law. The Commission erred in not affirming the decision of the Presiding Examiner.

2. The Commission erred in finding (p. 2) the "effective rate on June 7, 1954 was 8.997 cents per Mcf at 15.025 psia excluding taxes, for that was the charge actually being collected from Texas Gas", and in concluding (p. 3) "It clearly appears, therefore, that the price actually collected on June 7, 1954 is 8.997 cents, and this under our previous decisions is the effective rate as of that date and continues on from that date until changed in accordance with Section 4 of the Natural Gas Act and our Regulations." [fol. 147] We admit that 8.997 cents was actually being paid on June 7, 1954. This amount was collected by Shell while claiming it was entitled to the higher price. But we deny that the payment factor alone establishes the effective rate. The Commission's conclusion that the effective rate was not as the parties contracted but as one of the contracting parties saw fit to interpret its obligation, is insupportable in reason, and is contrary to law, the Natural Gas

Act, the Commission's Regulations, the principles announced in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332; *Natural Gas Pipeline Co. of America* v. *Harrington*, 246 F. 2d 915; *Memphis Light, Gas & Water Division* v. *Federal Power Commission* (U.S.C.A., D.C., decided November 21, 1957, not yet reported); and is violative of the Fifth Amendment to the Constitution of the United States in that, by construing its Regulations as it has, the Commission's order deprives Petitioner of its property without due process of law by impairing Petitioner's contract right to receive for its property the price agreed to be paid therefor by the buyer, and arbitrarily substitutes the amount which the buyer saw fit to pay for the amount which the contract obligated it to pay.

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3. The Commission erred in treating this case as governed by its decisions in the *Dorchester* and *Phillips* cases.

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4. The Commission erred (pp. 2 and 3) in determining "that the escalation clause in Shell's contract was not 'triggered' by the Texas Gas' agreement with Atlantic for increased rates dated February 17, 1954", and in concluding [fol. 148] (p. 3) that the 8.997 cent rate was not escalated because "The agreement with Atlantic does not constitute a new contract as required by Shell's escalation clause, but merely represents action taken under a pre-existing contract between Texas Gas and Atlantic." These conclusions are contrary to law, not supported by any evidence, and conflict with uncontradicted evidence.

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5. The Commission erred in concluding that the February 17, 1954 agreement was action taken under a pre-existing contract and hence could not constitute a new contract. It has been shown heretofore that the 1954 agreement between Atlantic and Louisiana Natural was not taken pursuant to the pre-existing contract because the time for action thereunder had expired. But assuming, while denying, that such was the case, it does not follow

that the 1954 agreement was not a new contract. The fact that action is taken pursuant to a pre-existing contract merely creates, it does not solve, the problem as to whether such action results in a new contract or a continuation of the old one.

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6. The Commission erred in referring (pp. 4-5) to the price provision in the Atlantic contract as being a price "redetermination" clause. This conclusion is contrary to the law and the contract itself. The price clause in the Atlantic contract is not a price "redetermination" clause. It is simply an agreement to agree.

7. The Commission erred as a matter of law in concluding (p. 5) that Condition XII of the Atlantic contract [fol. 149] makes it clear that where the parties are unable to agree, arbitration of the price dispute is assured. This conclusion disregards the clear meaning of Condition III that arbitration could not have been invoked unless the parties had attempted to reach agreement but failed to do so *at or before the beginning of the third five-year period, i.e., September 1, 1953.*

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8. The Commission erred in finding (p. 5) it unnecessary to consider whether paragraph (b) of Condition III of the Atlantic contract is certain enough, and the Commission also erred in concluding that "paragraph (d) provides for a definite method by which a price will be fixed in case the parties fail to agree." For reasons heretofore given, arbitration could not have been invoked under the circumstances which Atlantic-Louisiana Natural found themselves in on September 1, 1953, the beginning of the third five-year period. Furthermore, even if the matter of price had gone to arbitration, the nature of the question to be arbitrated is such that no two of the three arbitrators may have ever agreed upon the same price, hence there is no definite standard to assure agreement as to price. Thus, a proper determination of this case is dependent

upon the meaning and legal effect of Condition III(b) and (c).

9. The Commission erred in relying upon the *Gammel, Anderson, Columbian Fuel* and *Baum* cases cited at page 5 of its order. The questions here involved were not raised as an issue in any of those cases. In none of those cases was there a provision such as Condition III(d) of the Atlantic contract that arbitration could only be invoked after certain conditions precedent had transpired within a given time. In none of those cases was there at issue the [fol. 150] question of whether an arbitration clause which required agreement of two of the three arbitrators was bound to make certain an agreement as to price when there could be no assurance that any two of the three arbitrators would ever agree upon the same price. And none of those cases involved application of the law of Louisiana, as we submit this case does, and under which even in the presence of an arbitration clause, no sale exists if the arbitrators cannot or be unwilling to make the estimation.

In the *Columbian Fuel* case, upon which the Commission appears to rely heaviest, a minimum 15¢ price assured a continuing contract even if the parties failed to agree upon a new price. In that case arbitration was for the purpose merely of ascertaining "reasonable market value" of the gas. No question was raised as to the efficacy of this provision. The matter there actually was submitted to arbitration and the arbitrators actually made an award. The suit was for judgment in accordance with the award. The facts and issues in that case are so completely different from the instant case, that it cannot have any precedental weight here.

10. The Commission erred in not holding this case to be governed solely by Louisiana law and in applying the law of the District of Columbia, and by assumption, the law of Texas.

Each of the contracts dealt with in this case relates to the sale and delivery in Louisiana of gas to be produced in that State. Nothing indicates that any law other than that of Louisiana is to apply. It would be unreasonable to assume that parties making a long-term contract dealing

with gas to be produced and delivered in Louisiana did [fol. 151] not intend that law to apply. The rule governing this case is announced by the Supreme Court in *Hall* v. *Cordell*, 142 U.S. 116, in which the court held that the forum must apply the law of the place of performance where there is nothing in the case to show that another law was intended.

11. To the extent the Commission did look to the law of Louisiana, it erred in failing to give effect to the last clause of LSA-CC Article 2465. This article relates to arbitration, and while it recognizes that price may be left to arbitration, it qualifies this exception to Louisiana's firm adherence to certainty of price as a requisite to a valid sale, by this condition:

> ". . . but if such person (arbitrator) can not, or be unwilling to make the estimation, *there exists no sale.*" (Emphasis supplied.)

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16. The Commission erred in its finding (3), page 7, that Petitioner's effective June 7, 1954 rate is 8.997 cents. This finding is contrary to the law and the evidence.

17. The Commission erred in denying Petitioner's motion for oral argument and leave to file brief. It is apparent from the foregoing that the Commission was not fully advised as to the reasons why the decision of the Presiding Examiner should be affirmed. All parties but Petitioner filed exceptions to the Presiding Examiner's decision. Petitioner was not allowed to answer those exceptions and fully to develop the reasons why the conclusion reached by the Presiding Examiner was correct.

We most earnestly feel that there are several issues which we can no more than lightly touch upon in this application, which were not considered at all by the Com- [fol. 152] mission, and which upon being fully developed will require that the decision of the Presiding Examiner be affirmed.

Wherefore, Petitioner prays that a rehearing be granted and that this matter be set for oral argument, with the

right to file briefs, so that Petitioner's position can be fully presented to the Commission.

Respectfully submitted,

Oliver L. Stone, 3950 R.C.A. Building, 50 West 50th Street, New York 20, New York.

George C. Schoenberger, Jr., William W. Westerfield, Jr., Shell Oil Company, Shell Building, New Orleans, Louisiana, Attorneys for Petitioner, Shell Oil Company.

[fol. 153]

BEFORE THE FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman, Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

Docket No. G-12191

IN THE MATTER OF SHELL OIL COMPANY

ORDER DENYING REHEARING—Issued January 8, 1958

On December 11, 1957, Shell Oil Company filed an application for rehearing of our order issued November 12, 1957, in which we determined Shell's rate properly effective on June 7, 1954, for the sale of gas from the Chalkley Field, Cameron Parish, Louisiana, to Louisiana Natural Gas Corporation, later merged into Texas Gas Transmission Corporation.[1] The result of our determinations was that the charge for natural gas by Shell under its FPC Gas Rate Schedule No. 153 to Texas Gas, effective June 7, 1954, was 8.997 cents per Mcf at 15.025 psia excluding the one cent gathering tax. The bases for our decision were (1) that the 8.997 cents per Mcf charge was that actually paid as of June 7, 1954, rather than Shell's claimed contract charge of 12.5 cents and (2) that the charge of 8.997 cents

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[1] We shall refer to the Buyer as Texas Gas to avoid confusion.

was not escalated under the provisions of Shell's contract with Texas Gas although Texas Gas had entered into a letter agreement for the purchase of gas at 12.5 cents per Mcf at 15.025 psia from The Atlantic Refining Company. It was our view that the letter agreement was entered into pursuant to a continuing basic contract between Atlantic [fol. 154] and Texas Gas' predecessors,[2] so that it would not "trigger" the escalation clause in Shell's contract as would a completely new contract between Texas Gas and a seller of natural gas, all as set forth fully in our previous order.

Shell in its application for rehearing objects to our conclusion that the actual rate paid on June 7, 1954, that is 8.997 cents per Mcf, is the effective rate on that date. Our reasoning on this proposition is set forth in the orders cited in our order of November 12, 1957, *Dorchester Corporation*, 14 F.P.C. ....., Docket No. G-6505, November 14, 1955, and *Phillips Petroleum Company*, 17 F.P.C. 503. We might note, however, that if Shell's filing on November 18, 1954, of its FPC Gas Rate Schedule No. 153 for service to Texas Gas is examined, its 1951 contract with Texas Gas in terms provided for the 8.997 cent rate, and the contemporaneous bill dated May 31, 1954, and filed with the contract was also issued on this basis. There was included with the November 18, 1954, filing a revised billing statement prepared later by Shell that made the claim for payment on the 12.5 cent basis with the notation that the matter was under negotiation. What was outstanding, as far as Shell is concerned, as of June 7, 1954, was therefore, a contract with a stipulated rate, and a billing in accordance with that rate. Later Shell claimed that an additional amount was owed. In our opinion, Shell's rate being charged on June 7, 1954, by its own action was 8.997 cents, and was the effective rate. As pointed out in our *Phillips Petroleum* order, *supra*, it would be administratively infeasible if we had to accept a rate subject to later claims that it was not the correct one. Shell also argues that the effec-

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[2] Designated in the Commission's files as Atlantic's FPC Gas Rate Schedule No. 55.

[fol. 155] tive rate cannot be unilaterally changed by Texas Gas so that Shell is forever barred from receiving its contract price for the period commencing June 7, 1954. In our opinion the effective rate could have been changed by filing a rate increase at any time after June 7, 1954, as long as the rate increase filed was provided for in the contract between the parties, and was not disallowed by the Commission.

Shell also contends that we were incorrect in finding that the escalation clause in Shell's 1951 contract was not "triggered" by Texas Gas' letter agreement with Atlantic for increased rates dated February 17, 1954. Shell relies heavily in the provisions in Condition III of the original Atlantic contract which provides for a price to be agreed upon "at the beginning" of the renewal period arguing that this expression means that the agreement as to price in the renewal period, which began September 1, 1953, was required to have been made before the beginning of the period. We do not think that the parties intended to be so rigid in their relationships that they could not complete their negotiations after the beginning of the renewal period. In fact their language would indicate otherwise.

According to the contract, executed in 1943, it was to remain in effect for the life of the North Tepetate pool, but not to exceed 25 years. When the first five-year term of the contract expired September 1, 1948, agreement was not reached on the price until October 29, 1948, when a letter agreement was entered into with one of Texas Gas' predecessors covering six months of the second five-year period, followed by a more formal supplemental agreement dated February 16, 1949, with a succeeding buyer covering the balance of the second five-year period. As the second five-year period drew to a close, by letter dated August 27, 1953, Texas Gas' predecessor, Louisiana Natural, called the attention of Atlantic to the fact that the original contract provided for price redetermination for each five-[fol. 156] year period and notified Atlantic of its willingness to commence negotiations with respect to the price. When Atlantic and Texas Gas finally reached their agreement on February 17, 1954, covering the third five-year period commencing September 1, 1953, they recited they

were acting in accordance with Condition III of the original contract. There thus seems little doubt that the parties believed that they could complete their redetermination after the beginning of the third five-year period in question. It seems to us equally true that the actions of the parties carried out their intentions as expressed in the contract.

Shell argues with respect to arbitration that this procedure could not have been invoked unless the parties had attempted to reach an agreement but had failed to do so before the beginning of the renewal period on September 1, 1953. This argument, in effect, is that the contract lapsed by reason of the failure of the parties to attempt to reach an agreement prior to September 1, 1953. We find no reason in the terms of the contract or in the intention of the parties there expressed, to believe that there was any such lapse in the contract as claimed by Shell, and we believe that as confirmed by the actions of the parties themselves, the contract continued after such date.

Shell points to the possibility that the arbitrators, even if properly appointed, may not agree on a price. We must assume this is a possibility, but that does not mean that there exists no contractual right to go to arbitration in order to have the price determined. It may be true that if the arbitrators fail to achieve a result, there will exist "no sale" under the provisions of Article 2465 of the Louisiana Code, but that does not mean there exists no contract to determine the price by arbitration, and this contract is not invalid as the one in *Louis Werner Sawmill Co.* v. [fol. 157] *O'Shee*, 111 La. 817, 35 So. 919, cited by the parties and by us in our previous order. In that case arbitration could have been defeated by either party; in the present case each party is bound to the other by the arbitration clause which provides that "if one of said parties shall have failed to appoint an arbitrator within the time provided for herein, it is expressly understood and agreed that the sole arbitrator shall arbitrate the question alone." This, of course, achieves a result similar to that suggested by the French Commentator Marcadé, quoted by the Court in the *Werner* case, and in our previous order, to the effect that a sale would come about, in case of disagreement of

the parties, if the price were to be determined by experts to be appointed by the parties or alternatively by a judge. We therefore conclude that the Atlantic contract continued after September 1, 1953 as a binding obligation between the parties although subject to their later agreement as to price and, in case of their failure to agree, subject to the privilege of either or both parties invoking arbitration. Therefore the February 17, 1954 letter agreement between Atlantic and Texas Gas was not a new contract and did not "trigger" Shell's escalation clause.

We may add at this point that where Shell and its buyer did intend that escalations take place when prices were raised under either old or new contracts, language was used calculated to achieve this result, which may be compared with that used in Shell's contract with Texas Gas quoted in our previous order. While we do not wish to be considered as interpreting such language here, the contrast with the language used in Shell's contract with Texas Gas is significant. For instance in Shell's Gas Rate Schedule No. 4 it is provided:

> "If at any time or times the price per Mcf of gas or dry gas purchased by [the Buyer] from any gas pro- [fol. 158] ducer whomever . . . shall be greater than the price per Mcf of gas purchased hereunder, [the Buyer] will increase the price per Mcf payable to [Shell] for gas delivered hereunder. . . ."

In Shell's Gas Rate Schedule No. 7, it is provided:

> "Buyer agrees that if, during the term of this agreement, it purchases or agrees to purchase natural gas at any place within a distance of twenty-five (25) miles of the delivery point under the present contract, at a price or prices higher . . . than the prices provided for by the present contract, . . . it will, upon seller's request, thereafter pay to seller a price or prices under the present agreement not less than the higher price so being paid."

There are numerous other examples included in the present record.

Shell finally makes the point that it should have been permitted to argue orally and to answer the exceptions filed to the decision of the presiding examiner. We are of the opinion that Shell has had ample opportunity to get its views before us. After the completion of the hearing it filed a brief and a reply brief before the presiding examiner. Since the decision of the presiding examiner was favorable to it, Shell filed no exceptions, but upon our issuing an order contrary to its contentions, it has had opportunity and has filed an application for rehearing in accordance with Section 19(a) of the Gas Act. Oral argument is not a matter of right.

As we stated in our order issued October 24, 1957, in *Continental Oil Company*, 18 F.P.C. ....., Docket No. G-6346, Shell's objection seems to proceed from a misconception of the Commission's function on exceptions to a presiding examiner's decision. The Commission is not dependent upon a new round of briefs and oral arguments, nor is it limited to the issues raised by the exceptions. The [fol. 159] Administrative Procedure Act expressly provided that it shall "have all the powers which it would have in making the initial decision" (5 U.S.C. § 1007). Under the Natural Gas Act the presiding examiner is but the "representative of the Commission designated by it" (Natural Gas Act § 15(a)), not an independent agency or tribunal. On exceptions the Commission supersedes its agent and the full record including the transcript of the hearing, exhibits, etc., the briefs submitted before the presiding examiner, and the transcript of any oral argument before the presiding examiner, as well as the presiding examiner's report and exceptions thereto, are before the Commission. Part of the large number of copies of pleadings, exhibits, reporters' transcript, briefs, etc., required by the Commission rules is accounted for by the necessity of providing a set for each of the five members of the Commission at this stage of the proceeding. And beyond this, our rules are designed to make sure that every party shall completely argue its case, not holding back any contentions for a later round of briefs, by explicitly providing that (§ 1.31(c)) "no matter not included in the exceptions filed as provided

in this section may thereafter be objected to before the Commission upon brief or oral argument, or in an application for Commission rehearing."

Exceptions with supporting reasons are narrowly limited to what is necessary to bring into focus the issues remaining in controversy. There is no provision for briefs either in support of or in opposition to exceptions (§ 1.31(b)). The issues and the exceptions are considered upon the whole record, in the light of the original briefs, the transcript of any oral argument before the presiding examiner, and oral argument before the Commission itself, if such argument is had.

[fol. 160] As the court said in *N.L.R.B.* v. *Eclipse Lumber Co.*, 199 F. 2d 684, 686 (CA 9) we know of no right that Shell has to reply to exceptions. It had a further chance to place its viewpoint before us when it exercised its statutory right to file an application for rehearing in which it set forth its arguments in full with citations of authorities. As had been said, " * * * due process deals with matters of substance and is not to be trivialized by formal objections that have no substantial bearing on the ultimate rights of parties." *Market Street Railway Co.* v. *Comm'n*, 324 U.S. 548, 562. "The requirements imposed by that guaranty are not technical, nor is any particular form of procedure necessary." *Inland Empire Council* v. *Millis*, 325 U.S. 697, 710.

The Commission finds:

The application for rehearing of our order issued November 12, 1957, in this proceeding, except as stated above, sets forth no new facts and no principles of law which either were not fully considered by the Commission when it issued that order or which having now been considered warrant any change in or modification of such order. All contentions and objections not specifically discussed or referred to herein have been considered and found either without basis in law or support in fact, and not sufficiently material to warrant individual treatment.

The Commission orders:

The application for rehearing filed by Shell on December 11, 1957, with respect to our order issued November 12, 1957, is hereby denied.

By the Commission.

Joseph H. Gutride, Secretary.

[fol. 161]

Docket No. G-12191

In the Matter of Shell Oil Company

Issued January 8, 1958

Connole, Commissioner, concurring in the result:

For the reasons set forth in my separate statement to the order of the Commission issued November 12, 1957, in this proceeding, the petition for rehearing sets forth good and sufficient reasons when it addresses itself to the question whether the rate schedule on file or the monies changing hands prescribes the effective and applicable rate. Indisputably it is contained in the rate schedule on file. Accordingly, I dissent from so much of this order that finds otherwise.

I concur in the reasoning contained in the balance of the order, however, and with the result reached.

William R. Connole

Jan -6, 1955

Shell Oil Company
RCA Building
50 West 50th Street
New York 20, New York

Attention: W. B. Golush, Manager
Head Office Gas Department

Gentlemen:

This is with reference to your letter of September 30, 1954, transmitting for filling with this Commission a contract dated May 1, 1951 with Louisiana Natural Gas Corpo- [fol. 162] ration, which you identify as your Rate Schedule 49. Accompanying this rate schedule is a bill setting forth a contract price of 12½¢ per Mcf purportedly charged during the month of May 1954, with a note that Shell claims the contract price to be 12½¢ per Mcf effective from September 1, 1953, but has received only 8.997¢ per Mcf, and the matter is now under negotiation with the purchaser.

A review of the contract filed as a rate schedule reveals no basis for charging any prices other than 8.997¢ per Mcf. In this connection your attention is directed to Section 4(c) of the Natural Gas Act which requires the filing of schedules showing "all rates and charges" for any sale subject to the jurisdiction of the Commission. If the claimed price of 12½¢ per Mcf is based upon some document other than the contract tendered for filing, to complete your rate schedule, such other document should be filed with the Commission; or if no other document exists, a complete statement of the basis for the ½¢ per Mcf price should be filed. Pending receipt of your advice in this matter, no further action will be taken with respect to your filing of the subject rate schedule.

A copy of this letter is being forwarded to Louisiana Natural Gas Corporation for its comment.

Very truly yours,

Leon M. Fuquay, Secretary.

Rates

CGD:hh
1-3-55

copy to Louisiana Natural Gas Corp., P.O. Box 1299, Pioneer Building, Lake Charles, Louisiana.

[fol. 163]

EXHIBIT "B"

I.

Quality of Gas

1. The gas delivered hereunder shall be merchantable natural gas, at all times complying with the requirements as to purity expressed in this contract.

(a) The gas to be delivered hereunder shall have a gross heating value of not less than one thousand (1000) British thermal units per cubic foot. In the event that the total heating value of the gas per cubic foot in any month falls below one thousand (1000) British thermal units per cubic foot, Buyer shall have the option (i) to refuse to accept said gas so long as said total heating value remains below one thousand (1000) British thermal units per cubic foot, or (ii) may continue to accept delivery of said gas, in which case, a reduction shall be made in the total amount which Buyer would otherwise pay for such month if the total heating value were one thousand (1000) British thermal units or above. Such reduction shall be determined by multiplying said amount so otherwise payable by a fraction, the numerator of which is the deficieney in total heating value per cubic foot below one thousand (1000) British thermal units and the denominator of which is one thousand (1000). Such reduction shall be reflected on the bill rendered for such month and the net amount is the total amount to be paid by Buyer for such month.

(b) The gas to be delivered hereunder shall be commercially free from dust, gums, gum-forming constitu-

[fol. 164] tents, gasoline, water or any other substance of any kind which may become separated from the gas in the course of transportation through Buyer's pipeline at a pressure of one thousand (1000) pounds and a temperature of 120° Fahrenheit. All gas delivered hereunder, which may be dehydrated by Seller, shall in no event have a water content in excess of six and two-tenths (6.2) pounds of water per million cubic feet of gas measured at a pressure base of 15.025 pounds per square inch and at a temperature of sixty (60) degrees Fahrenheit as determined by dew point apparatus approved by the Bureau of Mines.

(c) The gas to be delivered hereunder shall not contain more than one (1) grain of Hydrogen Sulphide per one hundred (100) cubic feet as determined by quantitative test after presence of Hydrogen Sulphide has been indicated by qualitative test, which shall consist of exposing a strip of white filter paper freshly moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, to be exposed to the gas for one and one-half (1½) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas not impinging from the jet upon the test paper, and which qualitative test shall be deemed to be satisfied if, after this exposure, the test paper is found not distinctly darker than a second paper freshly moistened with a similar solution and not exposed to the gas. The gas to be delivered hereunder shall not contain more than twenty [fol. 165] (20) grains of total sulphur per one hundred (100) cubic feet.

(d) The gas shall not contain in excess of three percent (3%) by volume of carbon dioxide nor more than one percent (1%) by volume of oxygen.

(e) The temperature of the gas to be delivered hereunder shall not be in excess of one hundred twenty degrees (120°) Fahrenheit.

II.

Measurements

1. (a) The sales unit of the gas deliverable under this agreement shall be one thousand (1000) cubic feet.

(b) The volume of gas delivered by Seller hereunder shall be measured at the orifice meters of Buyer at the point or points of delivery which, together with any buildings and all other collateral equipment required for the determination of volume, Buyer agrees at its expense to install, maintain and operate at the point or points of delivery. Orifice meters shall be installed and operated and volumes computed in accordance with American Meter Company Bulletin E2 (1936).

(c) The unit of volume for the purpose of measurement shall be one (1) cubic foot of gas at a temperature base of sixty (60) degrees Fahrenheit, and at a pressure of fifteen and twenty-five thousandths (15.025) pounds absolute. It is agreed that the gas shall be [fol. 166] measured according to Boyle's Law for the measurement of gas under varying pressures with corrections for deviations therefrom determined as provided in subparagraph (d) below.

(d) The deviation of the gas from Boyle's Law shall be determined by tests at intervals of three (3) months or at such other intervals as are found necessary in practice. The apparatus and the method to be used in making said tests shall be in accordance with the recommendations of the National Bureau of Standards of the Department of Commerce or any other mutually agreed upon method. Each test shall determine the correction to be used in computing the volume of natural gas delivered until the next test.

(e) The temperature of the gas flowing through the meter or meters shall be determined by the continuous use of a recording thermometer of standard manufacture installed by the Buyer and acceptable to the Seller

and so installed that it may properly record the temperature of the gas flowing through the meter or meters. The arithmetical average of the 24-hour record, or of so much of the 24 hours as gas has been passing if gas has not been passing during the entire period, from the recording thermometer shall be deemed to be the gas temperature for the day and shall be used to make the proper corrections in volume computations.

(f) The specific gravity of the gas delivered hereunder shall be determined once each month by a gravity balance of standard manufacture or, at the option of the Buyer, by the use of a recording type gravitometer to be installed, maintained and operated by Buyer at [fol. 167] the point or points of delivery. If monthly determinations are made, the latest determination shall be used for the ensuing month but if a recording gravitometer be installed, then the arithmetical average of the hourly specific gravity recorded during each twenty-four (24) hour period shall be used to make proper correction in volume computations to a specific gravity of six tenths (0.6).

(g) The gross heating value per cubic foot of the gas at a temperature of sixty degrees (60°) Fahrenheit, saturated with water vapor, and at an absolute pressure equivalent to thirty (30) inches of mercury at thirty-two degrees (32°) Fahrenheit shall be determined from time to time by Buyer or at the request of the Seller either (i) by a manually operated calorimeter of a type approved by the United States Bureau of Standards and operated in accordance with the methods recommended by said bureau or (ii) at the option of the Buyer, by a recording calorimeter of an approved type installed at the point or points of delivery, operated and maintained by the Buyer at its own expense, in which case the gross heating value of the gas delivered each day shall be determined by the arithmetical average of the daily records of such recording calorimeter.

(h) Seller may install, maintain, operate and remove such check measuring equipment as it desires, provided that such check meters and equipment shall be so installed as not to interfere with the operation of meters through which Seller delivers gas at or near [fol. 168] the point or points of delivery.

(i) In the event any measuring equipment is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated (a) by using the registration of any check measuring equipment if installed and accurately registering, or, in their absence, (b) by correcting the error if the percentage of error is ascertained by calibration test or mathematical calculation, or, if neither such method is feasible, (c) by estimating the quantity of delivery by deliveries during a period under similar conditions when the measuring equipment was registering accurately.

(j) From time to time and at least once a month, on a date as near the first of the month as practicable, the accuracy of Buyer's measuring equipment shall be verified in the presence of representatives of both Seller and Buyer and the parties shall jointly observe any adjustments which are made in such measuring equipment. If either party at any time shall notify the other that such party desires a special test of any meter, the other party shall cooperate to secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other notice of the time of all tests of meters reasonably in advance of the holding of tests in order that the other party may conveniently have its representative present.

[fol. 169] (k) If, upon any test, any measuring equipment is found to be no more than two percent (2%) fast or slow, previous readings of such equipment shall be considered correct in computing the deliveries of gas hereunder, but such equipment shall be adjusted at once to read accurately. If, upon test any measuring equipment shall be found to be inaccurate by an amount

exceeding two percent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon. But in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of the last test not exceeding a correction period of sixteen (16) days.

(l) Buyer and Seller shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect at any time during business hours any and all equipment of Buyer used for the measurement or determination of the nature or quality of gas delivered hereunder.

(m) All test data, charts and other similar record shall be preserved by Buyer for a period of at least six (6) years and shall on the request of the Seller be sent to the Seller for inspection at all reasonable times.

[fol. 170]

III.

Billing and Payment

1. (a) Buyer agrees to pay to Seller, on or before the 20th day of each calendar month, for all gas delivered under the terms hereof during the preceding calendar month.

(b) All sums due for gas which Buyer was obligated to purchase and pay for but failed to take during any period of twelve (12) successive calendar months shall be paid by Buyer on or before the 20th day of the first succeeding calendar month after such twelve month period. If, during the next succeeding twelve (12) month period, Buyer shall take in excess of the minimum quantity of gas required to be taken during such period, Buyer shall be entitled to a credit against

such excess for the gas paid for but not taken during the preceding twelve (12) successive calendar months.

(c) Should Buyer fail to pay for the total quantity of gas required to be purchased by Buyer hereunder in accordance with the provisions of this contract, interest on the unpaid amount so due shall accrue at the rate of six percent (6%) per annum. If such default in payment continues for thirty (30) days after written notice from Seller to Buyer, Seller may, in addition to all other rights and remedies, suspend deliveries of gas hereunder and/or terminate this contract by giving Buyer written notice of such termination. In the event any error is discovered in the amount billed in any statement of Buyer, such error shall be adjusted within [fol. 171] thirty (30) days of determination thereof, provided that claim therefor shall have been made within ninety (90) days from the date of discovery of such error, but in any event within two (2) years from the date of such statement.

(d) All books of account and similar records bearing upon the amount of gas delivered and the amount of gas which Buyer is obligated to purchase hereunder and the amount due therefor shall be preserved by the Buyer for a period of at least six (6) years and shall, at the request of Seller, be made available for inspection by Seller at all reasonable times.

IV.

Regulatory Bodies

1. This contract shall be subject to all valid applicable state and federal laws, rules and regulations. All such laws, rules and regulations shall be presumed by both parties to be valid unless and until a court of competent jurisdiction shall hold otherwise with respect thereto.

V.

Force Majeure

1. In the event of any party being rendered unable, wholly or in part, by force majeure or other causes herein

specified, to carry out its obligations under this contract, it is agreed that on such party's giving notice and reasonably full particulars of such force majeure in writing or by telegraph to the other parties within a reasonable time [fol. 172] after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as and to the extent that they are affected by such force majeure or other causes herein specified, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraints of the government, either federal or state, civil or military, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, temporary failure of gas supply, inability of any party hereto to obtain necessary materials, supplies or permits, due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (both federal and state), including both civil and military, any act or omission on the part of any purchaser or purchasers of gas from Buyer by reason of force majeure affecting such purchaser or purchasers, and any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the party claiming suspension. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch [fol. 173] shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

[fol. 174]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,568

SHELL OIL COMPANY, Petitioner,

—v.—

FEDERAL POWER COMMISSION, Respondent,

TEXAS GAS TRANSMISSION CORPORATION, Intervenor,

and

LOUISVILLE GAS & ELECTRIC COMPANY, Intervenor.

On Petition to Review an Order of the Federal Power Commission

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Argued October 6, 1958

Before GOODRICH, McLAUGHLIN and STALEY, *Circuit Judges.*

OPINION OF THE COURT—Filed January 27, 1959

By McLAUGHLIN, *Circuit Judge.*

This case is another in that line wherein the issue has been the effective rate on June 7, 1954 for natural gas sold [fol. 175] by a so-called independent producer. That date was when the Supreme Court announced its decision in Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954). The effect of that decision was to subject independent producers of natural gas to regulation by the Federal Power Commission. The Commission, in implementing the decision, called for filing of rate schedules setting forth " • • • rates • • • effective on June 7, 1954."

What that rate was for Shell Oil Company in its contract with Louisiana Natural Gas Company[1] depends upon the contract-established provisions rather than on the fortuity of rates which were being actually paid on that date. See Natural Gas Pipeline Company v. Federal Power Commission, 253 F.2d 3, (3 Cir. 1958), cert. den. 357 U.S. 927 (1958). The contract had been entered on May 1, 1951 and for the period in question provided for the sale of gas at 8.997¢ per Mcf, unless " * * * at any time after December 31, 1951, Buyer [Louisiana] * * * [should] enter into a contract providing for the purchase by it of gas * * * " produced and delivered within a fifty mile radius of any delivery point specified. In that event the contract price was to escalate to the same price as that called for by the subsequent contract with the other producer.

Louisiana had already succeeded to rights as purchaser under a contract entered with Atlantic Refining Company, another producer, in 1943. Under that contract buyer agreed to buy specified daily quantities of gas; it was provided that the rights of the parties should continue for the producing life of the field involved but for not more than twenty-five years. In that contract the buyer agreed to pay 2.2¢ net per Mcf for gas received for the first five years. No fixed price was established for periods after that, but rather the contract provided:

> [fol. 176] "(b) At the end of the first five-year period, Buyer and Seller are to reach an agreement as to the price for gas sold and delivered under this contract during the second five-year period. The price to be paid during such second five-year period is to be agreed upon at the beginning of such period after a survey of prevailing prices for gas being sold in similar quantities in the southwestern part of Louisiana.
>
> "(c) During succeeding five-year periods, price to be paid will be determined at the beginning of each

[1] Louisiana Natural Gas Company was a subsidiary of Texas Gas Transmission Corporation. On June 30, 1955 it was merged into the parent corporation.

period in the same manner as provided for in paragraph (b) above.

"(d) In the event that the parties are unable to agree upon the price to be paid for gas after the first five-year period, in accordance with the arrangements set forth in paragraphs (b) and (c) above, such determination shall be submitted to arbitration in accordance with Condition XII."[2]

A price for the second five year period had been agreed to by negotiation between the buyer and seller, but this agreement expired on August 31, 1953. Louisiana and Atlantic undertook negotiations in September of that year for agreeing to a price for the third five year period.

[fol. 177] The parties had difficulty in agreeing. The negotiations consumed five and a half months, finally culminating in an agreement dated February 17, 1954, whereby the price was established at 12.5¢ per Mcf, plus gathering tax. Shell thereafter accidentally learned of this and subsequently notified Louisiana that it felt entitled under its contract to an escalation of its price to the same 12.5¢ level.

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[2] Condition XII reads:

"* * * The party desiring such arbitration shall notify the other and in such notice shall name an arbitrator, (sic) the arbitrator to be appointed by the other party shall be named within ten (10) days after receipt of such notice of arbitration, and an additional arbitrator shall, within ten (10) days of the appointment of the second arbitrator, be selected by the two (2) arbitrators theretofore appointed, but if one of said parties shall have failed to appoint an arbitrator within the time provided herein, it is expressly understood and agreed that the sole arbitrator shall arbitrate the question alone. If arbitrators shall have been appointed by the respective parties and shall have failed to select the third arbitrator within the above stated time, the third arbitrator shall be appointed by the senior Judge of the 5th Federal Judicial Circuit upon application therefor by either of said parties to the arbitration.

"* * * The decision in writing signed by a majority of the arbitrators shall be final and conclusive with respect to the matter submitted and the parties hereto agree to accept and abide by the same."

There is no dispute that the fifty mile radius requirement of the Louisiana-Shell contract is satisfied. The argument concerning Shell's right to a higher price turns on whether the Louisiana-Atlantic agreement of February, 1954 was an "entering of a contract" which activated the price escalation clause of the Louisiana-Shell contract.

When Shell filed its rate schedule with the Federal Power Commission pursuant to the Commission's orders implementing the Phillips decision, the Commission neither accepted or rejected the submitted rate, pending further explanation by Shell of why it claimed 12.5¢ per Mcf. Shell presented that explanation in February, 1957 when it filed for an increase in rate to 16.75¢ per Mcf. The reasonableness of that rate is still awaiting hearing. The Commission at this point directed that a hearing be held to determine the effective rate on June 7, 1954 under the Shell contract which it simultaneously accepted for filing.

As a result of the hearing the examiner found the effective rate to be 12.5¢. This finding was subsequently reversed on November 12, 1957, by the Commission whose decision is here on appeal by Shell.

The clause in the Louisiana-Shell contract which is central to this controversy is one of the type commonly referred to in the trade as a "most favored nation" clause. The usual objective of such a clause is to assure the seller a top price for its gas. Testimony at the hearing before the Commission's examiner was that Louisiana had desired a twenty year contract which was for a term longer than Shell had at that time ever contracted for, at least in that area. Because of difficulty in establishing a price for so [fol. 178] long a period, the clause in question was agreed upon. It appears that at the time of contracting Shell knew Louisiana was purchasing gas from Atlantic but was not familiar with the specific terms of that contract. These facts tend strongly to demonstrate that the intention of the parties was for any higher price paid by Louisiana to another producer to trigger a rise on the Shell contract to the same figure except possibly where a pre-existing contract already provided for a settled step-up in price.

If the precise arrangement under the Atlantic contract had been known to Shell, then perhaps Louisiana could

argue to more purpose that the wording of the Shell contract (which calls for the "enter[ing of] a contract providing for the purchase * * * of gas") was not intended to trigger escalation following an agreement on price when that agreement was reached under an earlier gas purchase contract which contained a binding agreement subsequently to agree on price. But even then the fact cannot be avoided that, at least for purposes of the favored nation clause, the "entering of a contract for the purchase of gas" has not been accomplished until the price has been established. True, Atlantic was obligated to deliver gas for twenty years from 1943 but, just as important, Louisiana was bound to pay for it. And while there may have been enforceable means for settling the rate of payment in the event the parties could not agree, it would nonetheless be true that it was when the price was finally established, by whatever means, that a contract had thereupon been entered. Actually, if the Louisiana-Atlantic agreement of February 17, 1954, was not an entering of a contract we are at a loss as to how it would be properly and legally characterized. The situation fits best into the rubric of an accord itself taken as satisfaction. See 6 Williston on Contracts, §§ 1841, 1846 (rev. ed. 1938). Both parties gave up their rights under the original contract to proceed to arbitration, promising on the one side to pay and on the other side to accept the price reached.

[fol. 179] To make the date of the accord retroactive to the date of the original agreement-to-agree is, of course, abstractly conceivable; but for a court to attribute that effect to the Atlantic contract and apply it to the Shell contract in the absence of recognition of this possibility in the Shell contract would take the law out of the realm of business practicalities. It is far more in line with the realities of the situation to say that complete performance of the 1943 contract required the parties to enter into subsequent contracts. The entering into one of those subsequent contracts triggered the escalation clause in the Shell agreement.

We have assumed without deciding that the Atlantic contract of 1943 did in fact impose a binding agreement-

to-agree on the price for gas in each of the contract's last four five year periods. Thus it has not been necessary to determine the several questions raised in connection with the arguments directed to that phase of the case. Of course if the Atlantic contract of 1943 was not a binding agreement-to-agree, that circumstance alone would place the February, 1954 Atlantic contract fully within the terms of the escalation clause in the Shell contract.

The Federal Power Commission order of November 12, 1957 finding Shell's rate with Louisiana on June 7, 1954 to be 8.997¢ per Mcf will be vacated. Because the escalation called for by the contract requires consideration of other factors in determining whether the price to another supplier was indeed higher, the cause will be remanded for consideration of those factors.

[fol. 180] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,568

SHELL OIL COMPANY, Petitioner,

—v.—

FEDERAL POWER COMMISSION, Respondent,

TEXAS GAS TRANSMISSION CORPORATION, Intervenor,

LOUISVILLE GAS & ELECTRIC COMPANY, Intervenor.

JUDGMENT—January 27, 1959

Present: GOODRICH, MCLAUGHLIN and STALEY, Circuit Judges.

This cause came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of November 12, 1957 of the Federal Power Commission be, and it is hereby vacated, and the cause remanded with directions to proceed in conformity with the opinion of this Court.

January 27, 1959

[fol. 181] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,568

SHELL OIL COMPANY, Petitioner,

—v.—

FEDERAL POWER COMMISSION, Respondent,

TEXAS GAS TRANSMISSION CORPORATION, Intervenor,

and

LOUISVILLE GAS & ELECTRIC COMPANY, Intervenor.

Present: GOODRICH, McLAUGHLIN and STALEY, Circuit Judges.

ORDER DENYING PETITIONS FOR REHEARING—March 4, 1959

The petitions for rehearing of Federal Power Commission, Texas Gas Transmission Corporation and Louisville Gas & Electric Company in this case are denied.

By the Court,

McLaughlin, Circuit Judge.

Dated: March 4, 1959.

[fol. 182] Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 183]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1958.

TEXAS GAS TRANSMISSION CORPORATION and LOUISVILLE GAS AND ELECTRIC COMPANY, Petitioners,

—v.—

SHELL OIL COMPANY

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—May 25, 1959

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 2, 1959.

William J. Brennan, Jr., Associate Justice of the Supreme Court of the United States.

Dated this 25th day of May, 1959.

[fol. 185]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1958.

FEDERAL POWER COMMISSION, Petitioner,

—v.—

SHELL OIL COMPANY, TEXAS GAS TRANSMISSION CORPORATION, and LOUISVILLE GAS & ELECTRIC COMPANY

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—May 25, 1959

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 2, 1959.

William J. Brennan, Jr., Associate Justice of the Supreme Court of the United States.

Dated this 25th day of May, 1959.

[fol. 187]

SUPREME COURT OF THE UNITED STATES

No. 167, October Term, 1959

TEXAS GAS TRANSMISSION CORPORATION, et al., Petitioners,

—v.—

SHELL OIL COMPANY

ORDER ALLOWING CERTIORARI—October 12, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is consolidated with No. 170 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 189]

SUPREME COURT OF THE UNITED STATES

No. 170, October Term, 1959

FEDERAL POWER COMMISSION, Petitioner,

—v.—

SHELL OIL COMPANY

ORDER ALLOWING CERTIORARI—October 12, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is consolidated with No. 167 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.